

# **Requirement and Rationality: Two problems concerning supererogatory acts**

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**Thesis submitted for the degree of Ph.D. in Philosophy  
at the University of Edinburgh  
2004**



The enclosed is my own work  
except where otherwise stated in notes or references



## ***Acknowledgements***

The idea for this thesis arose out of my work for the MSc. in Philosophy at Edinburgh University in 1998/9 and I would like to thank my supervisor for the dissertation, Peter Lewis and also Michael Menlowe, whose lively discussion on the work of Shelly Kagan proved to be the starting point for this thesis.

Special thanks are due to my supervisor for this thesis, Professor Rae Langton. Her constant philosophical enthusiasm was infectious and her keen criticism always welcome and illuminating. I have tried to live up to her standards, but of course all failings in the work are mine. Thanks also to Richard Holton, and all other members of the department, both past and present, who were particularly helpful to me as I struggled to complete this with the arrival of my daughter.

I also received much kind support and friendship from my other postgraduate colleagues and the administrative staff of the department along the way. Some material in this thesis arose out of a paper I presented at the Mark Powell Conference in Edinburgh in 2000, enthusiastically and expertly organised by the Scottish postgraduate community.

I would also like to thank Professor Barbara Herman for sparing me time for individual discussion on a visit to Edinburgh (and to Rae Langton for organising this). Some key parts of this thesis are due in no small part to that discussion.

In this thesis, I have used real examples of heroic and saintly behaviour, many of which involved a loss of life. I would like to record that I use these examples with great respect toward both the protagonists and their friends and families.

My particular thanks are reserved for my family. My parents provided great practical support and were as always enthusiastic about my endeavours. My daughter, born at the start of the project, endured the completion with great good humour and tolerance beyond her years. Finally, I would not have finished the work without my husband. His unfailing support and encouragement have made it all possible.

## **Abstract**

Urmson famously suggested that the supererogatory acts of saints and heroes should be separately classified within a moral theory. I support Urmson's suggestion that supererogatory acts should form a separate category within a moral theory, but justifying this poses a number of problems. I examine two. Firstly, there is the pressure of requirement. Supererogatory acts are optional, yet they are good acts and better than an act which the agent may have permissibly performed instead. Why, therefore, are they not required? The second problem concerns the rationality of supererogatory acts. If an agent has good reasons to support an alternative permissible act to the supererogatory one, how can we avoid describing the supererogatory act as irrational?

To provide a solution to these problems, I first establish four key characteristics of the supererogatory act. They are optional, rational, of moral worth and better than a permissible alternative. Unusually, I make no reference to cost in my definition, which is intended to covers all types of supererogatory act which ordinary morality considers supererogatory. I then examine Shelly Kagan's attack on supererogation which brings into focus the two problems of requirement and rationality. It relies on the consequentialist idea that maximising the overall impartial good is the only determinant of right action. Unless some limits are imposed on maximisation, there is no room for supererogation. Kagan argues that there are no such justifiable limits. He claims the most plausible way of setting limits is through an appeal to cost, which is unsuccessful.

In response, I firstly examine whether a maximising theory is of itself a bar to supererogation. I conclude that it is not, but that a recent attempt to produce a maximising account of supererogation is inadequate because its reliance on cost as a necessary feature of supererogation results in supererogatory acts being classified as irrational. I then argue that appealing either to the degree or the nature of cost experienced by an agent can never be a successful approach to a justification of supererogation. Alternative approaches such as limiting required action through the concept of a 'fair shares' morality or an interpretation of supererogatory acts as imperfect duties also prove inadequate.

My proposed solution to the problems of the pressure of requirement and rationality is to argue that supererogatory acts fall into two types. Firstly, there are acts which the agent considers required, but only by himself and not others. Secondly, where the agent does not consider his act required, he considers his options to be indeterminately ranked, so that he has reasons to perform either the supererogatory act or any alternative permissible act. The supererogatory act is nonetheless better than the alternative, although there are good reasons to perform both. My solution recognises that the four characteristics of supererogatory acts are in tension. However, it responds to the two problems by showing that supererogatory acts are optional and not required, and a moral reasoning process can be found to support them.

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## Chapter 1 Characteristics of the supererogatory act

### 1.1. The historical interpretation of supererogation

The term 'supererogation' goes back to the Latin translation of St. Luke's Gospel which deals with the final part of the story of the Good Samaritan.<sup>1</sup> The Samaritan, having given the robbed and injured man to the care of the inn-keeper: 'took out two pence, and gave to the host, and said: Take care of him; *and whatsoever thou shalt spend over and above*, I, at my return, will repay thee'.<sup>2</sup>

What do we learn from this first usage of the term? According to the Good Samaritan story, the supererogatory act did not consist in rescuing a mugged and injured stranger in the street. Instead, it was the act of benevolence that followed, when the Samaritan put the injured man up in the inn and did not seek to contain the cost of doing that to a particular limit. His concern was that the injured man be looked after, whatever it cost. The idea that benevolence should not be contained to limits is an important theme in the modern philosophical discussion of supererogation.

The theological use of the term extends beyond the Samaritan example. The doctrine of 'works of supererogation' as expounded by St. Thomas of Aquinas, made reference to two other biblical examples, which have a slightly different emphasis from the Good Samaritan story. The first is the story in St. Matthew's Gospel which tells of the rich young man who asks Jesus what he must do to earn eternal life. The rich man had kept the Lord's commandments. Jesus says 'If thou wilt be perfect, go sell what thou hast and give to the poor and thou shalt have treasure in heaven. And come and

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<sup>1</sup> Taken from the entry on 'supererogation' from The Oxford Dictionary of the Christian Church, p.1306.

<sup>2</sup> The Holy Bible (1956 Douay version) St. Luke's Gospel, Chapter 10, verse 35. '*Quodcumque supererogaveris*' refers to my italicised words. All biblical references are taken from the Douay version of The Holy Bible, published in 1956 in London by the Catholic Truth Society.

follow me'.<sup>3</sup> This was too much for the young man who 'went away sad; for he had great possessions'.

Perhaps it is enough for eternal life that the young man keep the commandments. Jesus' recommendation is for what to do to be *perfect*. Thus is born the idea that supererogation is equated with the counsels of perfection, somewhat beyond what is necessary to enter the kingdom of heaven, but something at which we should all be aiming, even if we do not always attain it. In this second Biblical example, we can interpret supererogatory action as behaving in a way *which is better than* merely doing what is required ( in this case, keeping the Commandments).

Finally, St. Paul's counsels on marriage and celibacy were also taken to support the concept of works of supererogation. In his letter to the Corinthians, St. Paul puts forward the view that a celibate life is a higher good than a married life because such a life can be fully dedicated to the works of God whereas married life involves caring for one's partner and thus detracting from time spent in praising and working for God.<sup>4</sup> Nonetheless, St. Paul accepts that married life is not wrong and is certainly better than living a dissolute life, which would involve bad actions. Better to marry than to burn! In this third example, we see that the emphasis is on the idea that it is not wrong to fail to live a 'saintly' life, although it is good (and preferable) to do so.

My interpretations of these Biblical examples all have features which are recognisable in the modern philosophical debate on supererogation. Firstly, the Good Samaritan story suggests that supererogatory action involves limitless beneficence. Secondly, the example of the rich young man puts forward the idea that supererogatory acts carry

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<sup>3</sup> The Holy Bible (1956 Douay version), St. Matthew, Chapter 19, verses 21-22.

<sup>4</sup> The Holy Bible (1956 Douay version), 1 Corinthians Chapter 7.

with them some form of ideal, being the best that one can do, or at the very least better than the minimum required. Thirdly, St. Paul's discussion of celibacy and marriage suggests that failure to perform supererogatory acts is not wrong. There is some flexibility or optionality with respect to supererogation. St. Paul allows that it is not wrong to live a life that is not as perfect as it could be.

These last two features of the historical, religious discussion of supererogation provide two characteristics of the modern, secularised supererogatory act. The first of these characteristics is that the supererogatory act is better than the moral minimum required. The second characteristic is that an agent cannot be blamed for failure to perform a supererogatory act. It is not wrong not to perform a supererogatory act. The first historical feature, where supererogatory action is linked to limitless beneficence in the case of the Good Samaritan, provides a challenge to the moral agent. How much good do we have to do and how much is optional?

In this chapter, I develop all of these themes, showing that the second and third historical features are in fact key characteristics of the supererogatory act and that the first is part of a major problem which supererogation throws up for the modern moral theorist. I begin by outlining two problems for any theorist who wants to support the separate classification of supererogatory acts. I then consider which acts ordinary morality deems to be supererogatory, providing a provisional classification of supererogatory acts into different types. I argue that supererogatory acts have four key characteristics and that embodying these characteristics in a definition results in a somewhat different picture of supererogation from that typically drawn by the modern theorist. It is this definition that I will use throughout to examine how the two problems I now outline can be overcome.



## **1.2 Two problems concerning supererogatory acts**

The modern discussion on supererogation starts with Urmson's suggestion that certain saintly and heroic acts deserve a separate classification within a moral theory. He asks us to imagine a soldier who throws himself on a live grenade to protect his fellow soldiers. He sacrifices his life for them. Can we call this moral action a duty? 'Clearly not', Urmson expects in response. His point is that the traditional classification of moral acts is inadequate. It should allow for supererogatory acts such as those of the soldier. Urmson states boldly:

'I have suggested that the trichotomy of duties, indifferent actions, and wrong-doing is inadequate. There are many kinds of action that involve going beyond duty proper, saintly and heroic actions being conspicuous examples of such kinds of action.'<sup>5</sup>

After the publication of Urmson's paper, 'Saints and Heroes', there was a flurry of response to it, then a loss of widespread interest in the specific subject of supererogation. When supererogation is discussed, theorists are often frustrated to find that they have difficulty giving an account of it in their theories. They either end up rejecting the category completely or leaving the topic only scantily discussed. This is not just because they address the question of supererogation as a 'leftover' rather than an important issue in its own right.<sup>6</sup> In fact many modern writers of different traditions acknowledge that supererogation poses serious problems for the moral theorist.

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<sup>5</sup> Urmson (1958) p.73

<sup>6</sup> There are some important exceptions to this. Nagel (1986) sees supererogation as a key issue in supporting his view of morality as accepting the structure of human motivation. Hare (1981) also sees it as supporting his view for two levels of moral thinking.

From the utilitarian viewpoint, Hare refers to 'the problem of what are called "works of supererogation"'.<sup>7</sup> Nagel, a deontologist, talks of the 'puzzling subject of supererogation'.<sup>8</sup> Dancy, a particularist, refers to 'the notion of supererogation involves something quite considerable in the way of a paradox'.<sup>9</sup> All these writers consider that there is a problem because they recognise the strong, intuitive pull of the optional nature of supererogation. In ordinary morality, it is important to be able to claim that there are some good acts which we can do if we choose, but which we are not obliged to do. Yet giving a robust account of supererogation from any of these different moral viewpoints is difficult.

There are indeed a number of difficult problems concerning supererogation which anyone who wants to follow Urmson and claim that supererogatory acts can form a separate category in moral theory must overcome. I intend to deal with two of them:

### ***1. The Problem of Requirement: If an act is good, why isn't it required?***

Supererogatory acts are very good. Often they are described as praiseworthy. They certainly have moral worth. So why aren't they required? Was Urmson's soldier merely doing his duty after all? Some think that that is how the act should be categorised.<sup>10</sup>

If we think that Urmson was right and that the soldier's act was supererogatory then we must explain why the act was optional. The explanation can take a number of

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<sup>7</sup> Hare (1981) p. 188

<sup>8</sup> Nagel (1986) p. 203

<sup>9</sup> Dancy (1988) p. 128

<sup>10</sup> For example, New (1974) p. 184 claims that the hero who receives a medal in the course of doing his duty was in fact doing just that.

different forms. It might focus on the frailty of human motivation and suggest that such acts are in some sense required, but that agents are excused them on account of their being too difficult. This form of explanation results in a 'weak' form of supererogation, where the supererogatory act carries with it some form of requirement, but excuses are available to the average agent. At the other end of the scale, the explanation can focus on the value of there being acts which can never be required. Here the supererogatory act carries no sense of 'ought' with it at all. It is truly optional. How can this be, given the act is so good? At least one of the goals of morality is to pursue the good, so why should an agent not have to perform certain acts that are very good, the supererogatory ones, but finds himself obliged to perform others, namely his duties?

***2. The Problem of Rationality: If there is a good reason not to perform the supererogatory act, isn't it irrational to do it?***

If a supererogatory act is optional, it suggests that there must be a good reason *not* to perform the supererogatory act, so isn't it irrational to perform it? In Urmson's example, hasn't the soldier got a good reason not to jump on the live grenade? Certainly. He will preserve his life if he doesn't. But then, according to the problem of rationality, if he doesn't jump on the grenade, it looks as though we shall have to call him irrational for not being a hero.<sup>11</sup> That does not seem to fit with our intuitions. And because supererogatory acts are optional, the problem can be stated the other way about. If there is a decisive reason not to perform the supererogatory act, isn't it

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<sup>11</sup> There is considerable debate over the use of the term irrationality. I am using the term 'irrational' here in the narrow sense outlined by Scanlon (2000). p.25. One description he gives of irrationality is when a person fails to form and act on an intention to do something even though he or she judges there to be overwhelmingly good reason to do it. This is deemed irrational.

irrational to perform it? Again, I suggest that we do not want to call saints and heroes irrational.<sup>12</sup>

So how does the agent reason when he has the opportunity to perform a supererogatory act? It does not look as though he can reason on the basis of deciding to perform whichever act is better, because that would mean that the supererogatory act would be required and failure to perform it would be irrational. If he chooses to perform the morally permissible alternative to the supererogatory act, he is not in a position to say that the reasons for performing this outweigh the supererogatory act; otherwise the non-supererogatory act would then be required. The idea is that in that case of supererogation the agent has a genuine option.

The answer to this moral reasoning problem is related to the first problem of requirement. If we can come up with a justification for supererogatory acts' not being required, then we must also be able to translate this answer into a form of reasoning which the agent uses when faced with the possibility of performing a supererogatory act.

### ***1.3 The consequentialist bias in the framing of the two problems***

Both problems of requirement and rationality have been discussed obliquely in the debate between consequentialists and non-consequentialists, concerning the issue of the overdemandingness of consequentialism.<sup>13</sup> My concern will be to address the

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<sup>12</sup> Some acts which seem to follow a supererogatory pattern may of course be considered irrational. For example, if an agent sacrifices his interests in favour of something trivial or unusual, it may be considered irrational or possibly even forbidden. Kagan (1989) p.16, has the example of a man rushing into a burning building at great risk to his life. There is a child to be saved and also a bird in a cage. The man saves the bird in a cage. I suggest that this would be an irrational act, but not a supererogatory one. A case of misplaced heroism, perhaps.

<sup>13</sup> Writers who have shown a direct interest in supererogation include various deontic specialists,

problems directly in the context of supererogation. However, I draw attention here to what might seem to be a hidden bias in the two problems and the way I have framed them. By suggesting that there is a pressure to perform acts which are better than other acts (without any other features attached to the acts except that they are 'better'), and that those are the only rational acts, I might be accused of posing the problem from the consequentialist viewpoint. Samuel Scheffler refers to this viewpoint as the concept of 'maximizing rationality', lying at the heart of consequentialism. He says:

'The core of this conception of rationality is the idea that if one accepts the desirability of a certain goal being achieved, and if one has a choice between two options, one of which is certain to accomplish the goal better than the other, then it is, *ceteris paribus*, rational to choose the former over the latter.'<sup>14</sup>

Non-consequentialists will say that they are sometimes required to perform acts which do not necessarily have a better outcome than an alternative, because the rightness of acts on their theory is not determined by how much good is produced. However, the two problems arise precisely because non-consequentialists suddenly seem to adopt a consequentialist manner of judging action in the case of the supererogatory. They consider it especially good because of the outcome of the act, yet do not consider it required because their method of judging right action does not rely on the amount of good produced as a yardstick. I consider this point further in the next chapter when I discuss a major consequentialist objection to supererogation.

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who have followed and developed the writings of Roderick Chisholm on the subject. These include Paul MacNamara (1986). David Heyd (1988) also produced a study of supererogation which attempted to develop a theory of supererogation outside standard normative theories. In direct contrast to Urmson, writers from the virtue ethics persuasion have also considered supererogatory acts as attesting to the importance of character, rather than action, in morality; e.g. Pybus (1982).

<sup>14</sup> Scheffler (1982), quoted in Scanlon (2000) p.82. See also Foot (1985) p.198 for a reinforcement of the idea that it is irrational to pursue an action which will not have the best results, when such an action is open to us.



My aim is to discover how an account of supererogation can deal with these two problems of requirement and rationality. I have approached the discussion from a 'theory-neutral' view, not privileging any particular moral theory whether it be consequentialist, deontological, contractualist or virtue-based. Nonetheless, contributions to the debate from specific viewpoints are unavoidable in my discussion. It is also worth pointing out that Urmson in his original discussion thought that a consequentialist theory would best handle an account of supererogation whereby supererogatory acts formed a separate category within the theory. I put forward a solution to the two problems in Chapter 7, part of which is a development of a suggestion made by Urmson. In prior chapters, I consider the success or otherwise of other accounts of supererogation. My discussion is structured around a major objection to supererogation which I discuss in detail in the next chapter.

In this chapter, I shall firstly consider the scope and variety of supererogatory acts and derive four key characteristics of supererogatory acts from my examples. I shall then propose a definition of a supererogatory act which embodies these characteristics. This results in a definition which is quite distinct from others in the modern literature. Armed with this definition, I consider in the next chapter an objection which focuses on the two problems of supererogation.

#### ***1.4 Which acts are considered supererogatory?***

It is easy to call to mind a rich variety of acts which we intuitively think of as supererogatory:

i) Heroic acts of rescue.

In this type of supererogatory act, the agent puts his life on the line for someone else and the emphasis is on a single act. An example: Joe, who is not a fireman, goes into a burning building to save a child at great personal risk. He is not required to do so. In doing so, it is deemed that he does more than he is obliged to; he has performed a supererogatory act. I shall be developing and referring to this example throughout and I shall label it Joe's Rescue.

ii) Saintly acts.

These are sometimes hard to distinguish from heroic deeds. Both types of act usually involve courage, but describing a deed as saintly rather than heroic often suggests that we know and approve of the motive and intentions of the act as well as merely approving of the outcome. I shall use the example of Gianna Beretta Molla, a newly proclaimed saint of the Catholic Church. Gianna, a doctor, was due to give birth to her fourth child when she found she had a tumour. Catholic teaching would have permitted a hysterectomy and the consequent loss of the unborn child by appeal to the doctrine of double effect, but Gianna chose more difficult surgery that endangered her life but saved the life of her baby. She died a week after her healthy child was born. I shall call the example Gianna's sacrifice.<sup>15</sup>

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<sup>15</sup> Reported in the "The Tablet" magazine, 22 May 2004 in an article 'Gianna's choice' by Frances Kennedy pps. 4/5.

iii) Saintly lives.

Whole lives rather than single acts are sometimes considered to be supererogatory. They too may end in the sacrifice of the agent's life, although not necessarily. Here is an example: Annalena Tonelli was murdered in October 2003 by a Somali gunman after spending 30 years tending patients with tuberculosis and social rejects among the nomadic Somalis. She worked alone and without formal support except for the friendship of those she helped. Her life had frequently been in danger as some traditionalists objected to her work for the stigmatised in society. Her death was reported as a 'martyrdom' and I refer to this example as Annalena's Saintly Life.<sup>16</sup>

iv) Favours.

Less dramatic acts may also be supererogatory. My neighbour will be away from home but is expecting a parcel. He asks me to take it in for him. It requires little effort on my part, but we might still consider that I am not required to do it. That is why it is a favour, not a duty. I shall refer to examples like these as small favours.

v) Acts of mercy and forgiveness.

If we give up the right to punish someone who has wronged us, that is sometimes seen as supererogatory. Here is an example of this type of act: Peter and Linda Biehl were a white American couple living in South Africa. Their daughter Amy was a passionate supporter of the anti-apartheid movement. She was shot dead by black

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<sup>16</sup> Reported in the "The Tablet" magazine, 11 October 2003 in an article 'For the love of Africa' p.10 by Maggie Black.



youths chanting 'One settler-one bullet'. Her parents attended the amnesty hearing of the four young men who were serving sentences for her murder and they spoke in favour of granting amnesty. In addition, they set up the Amy Biehl Foundation to try to save as many black youths as they could from the violence of township ghetto life. Their daughter's murderers now work for the foundation. I refer to this example as the Biehl's forgiveness.<sup>17</sup>

This categorisation of supererogatory acts is roughly drawn from our intuitions. Some theorists might want to restrict a separate classification of supererogatory acts to only one or two of these categories, for example to only heroic and saintly acts. I shall be arguing that it is not possible to restrict the category of supererogatory acts in this way and that any account of supererogation must be able to deal with the variety of supererogatory acts suggested by these intuitively-based categories. In my proposal in the final chapter, I put forward a more formal categorisation of supererogatory acts, but in the preliminary discussion I shall work with the intuitively-based categories.

The modern philosophical literature supports the idea that there is a wide variety of supererogatory acts. For example, Urmson describes supererogatory acts as:

'a range of actions which are of moral value and which an agent may feel called upon to perform, but which cannot be demanded and whose omission cannot be called wrong-doing.'<sup>18</sup>

Urmson concentrates on the supererogatory acts of the saints and heroes, not because he believes them to be the *only* type of supererogatory act, but because he considers

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<sup>17</sup> From a lecture given by Archbishop Desmond Tutu at King's College London as the third Lord Longford Lecture and reprinted in *The Tablet*, 21 February 2004, pps.13/16.

<sup>18</sup> Urmson (1958) p.67

them to be the most *conspicuous* examples of the type. He is careful to note that there are other types of supererogatory act.<sup>19</sup>

Further support for the idea that supererogatory acts can vary in type and degree comes from Roderick Chisholm:

'There are acts, sometimes called acts of "supererogation", which include, but are not restricted to, the great deeds of saints and heroes, and which are such that we can say of them: "You ought to perform them, but you don't have to." These include little acts of kindness and small favour which, like the more magnificent deeds, go beyond the call of duty. We might describe them as acts of "non-obligatory well-doing".'<sup>20</sup>

His very general description of supererogatory acts as 'non-obligatory well-doing' serves to make the point that there is a category of acts which could contain a wide variety of acts. Not just 'big' and 'small' acts such as my Joe, Gianna and small favours examples, where big and small relate both to the outcome and the cost to the agent, but also to acts of mercy and forgiveness, such as the Biehl's forgiveness, where the amount of moral worth and cost to the agent take a different form.

The modern discussion also touches on the relationship of supererogatory acts to dutiful acts. Strangely, it seems that we can perform a supererogatory act *instead* of doing our duty.<sup>21</sup> If I fail to keep my business appointment with you because I have

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<sup>19</sup> As an indication of the difficulties which arise in the discussion of supererogation, it is worth considering this point. Why did Urmson consider the deeds of saints and heroes *conspicuous* examples of supererogation? The answers may seem obvious, but they are instructive. Presumably, it may be a matter of either the amount of good achieved or the amount of sacrifice on the part of the agent or both. But are these restricted to supererogatory acts? Urmson specifically said that we also use the terms 'saints' and 'heroes' of agents when they perform certain difficult duties. We may take it, then, that the difficult duties can also be characterised in the same way, by either the amount of good achieved or the sacrifice on the part of the agent or both. The only difference appears to be that the supererogatory act is not required. The conclusion seems to be that the only conspicuous characteristic of the supererogatory act as far as Urmson is concerned is that it is supererogatory!

<sup>20</sup> Chisholm (1964) p. 152.

<sup>21</sup> Kamm (1985) supports this view. Also Rawls (1971) p.299: 'We cannot say, for example, that duties are lexically prior with respect to supererogatory actions, or to obligations.'

stopped to give blood at the site of an accident, then I am not morally in the wrong. Indeed, I am likely to be praised despite failing to perform my duty. If it is true that supererogatory acts can sometimes take precedence over duties, then it would seem to be extremely important to understand more about the nature of such acts.

It is also widely accepted that supererogatory acts must also be in the right context and have a certain motivational structure. Specifically, they must not be acts which 'right a wrong' on behalf of the agent. If I jump into a river to save the man I pushed in only minutes before, it will not be deemed a supererogatory act, even if I save him and lose my life in doing so. There are also degrees of this intuition; if I have encouraged my young friends to embark on a risky canoeing adventure and then am forced to save them, our intuitions waver about whether my act is supererogatory.

Some types of motive may also disqualify an otherwise supererogatory act. Urmson suggests that any act which is motivated by 'natural affection' does not count as supererogatory, so that a mother's sacrifice for her child does not come into this category.

'Let us be clear that we are not now considering cases of natural affection, such as the sacrifice made by a mother for her child; such cases may be said with some justice not to fall under the concept of morality but to be admirable in some different way'.<sup>22</sup>

The example of Gianna who died for her unborn child stands out as an exception to Urmson's stipulation on this point. (Of course, we may debate whether we consider Gianna's act to be supererogatory. I deal with the more controversial aspects of this saintly act later in the discussion).

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<sup>22</sup> Urmson (1958) p. 63. One wonders whether Urmson would have said the same for a father. See my reference to Godwin's example, chapter 5, fn 13, for the outcry when a son's preference for his father was disallowed as a respectable motive.

Presumably, Urmson's famous example of a soldier throwing himself on a grenade to save his comrades would not count as supererogatory, if the hero soldier and the recruits he saved were 'best buddies'. Urmson's view seems to be part of the long held tradition that moral acts may not stem from motives which are generated by emotions. I see no reason why a theory of supererogation should have to hold a particular position in the emotion/reason debate, but Urmson's stipulations on this point are interesting. I suspect that what underlies Urmson's point is that if the act is motivated by emotion then, it is suggested, this may have the effect of lessening the sacrifice to the agent and so rendering the act not supererogatory. In other words, what underlies this view is that cost to the agent is a necessary condition of supererogation. I shall be discussing this important aspect of supererogatory acts in Chapter 4.

It may also be that there is a trade-off between the moral worth of the motive and the amount of good that results from the act. If Urmson's soldier had had fame and glory for himself as his main motive for his act, perhaps also combined with the idea that he might survive his feat, we do not think so well of him, but it is still hard to refuse the label supererogatory given the outcome. But intuitively there is a cut-off point where the motive is so evil that no outcome however good can render that agent's act supererogatory.

According to our intuitions then, there are many different types of act which might be considered supererogatory. Can we establish any characteristics in common?

I am going to propose that there are four key defining characteristics of the supererogatory act. Firstly, I suggest that supererogatory acts are optional. In deontic terms, they are permissible acts, but non-obligatory. Secondly, supererogatory acts are better than a morally permissible alternative act available to the agent at the time.

Thirdly, they are acts of moral worth. Finally, they are always rational, at least in the sense of being rationally acceptable.

I discuss each of these characteristics in turn.

### **1.5 The Optionality Characteristic**

It is fundamental to the nature of a supererogatory act that the agent need not perform the act. What is in debate is why this is so and to what degree this is so for each act. Apart from my own proposal, discussed in Chapter 7, I shall be considering three main arguments which might justify the supererogatory act as optional.

#### **i) Cost to the agent**

The first justificatory argument relates to the cost the agent pays in performing the act. On one view, supererogatory acts may be acts that would be required but which we are excused because of the high cost to us. So, for example, Rawls says:

'Supererogatory acts are not required, though normally they would be were it not for the loss or risk involved for the agent himself...For while we have a natural duty to bring about a great good, say, if we can do so relatively easily, we are released from this duty when the cost to ourselves is considerable'.<sup>23</sup>

Intuitively this looks like an appealing way of explaining and justifying the optional nature of a supererogatory act, but there are problems. Why do we not have to pay a high cost in these cases, but are obliged to in some cases of duty? Urmson considered that the terms 'saints' and 'heroes' also applied to those who were doing difficult duties, so sometimes at least saints and heroes did not have the option to act as they

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<sup>23</sup> Rawls (1971) p.100



did. Also, suppose we consider acts supererogatory which either have little cost to the agent from the onlooker's view or the agent himself does not believe that the act costs him much. What has happened to the factor of cost here? Nonetheless, the idea that cost takes away the pressure of requirement and makes the act optional is very compelling in the case of certain supererogatory acts, such as my Joe, Gianna and Annalena examples, where the lives of the agents were at risk.

In Urmson's example of a soldier who throws himself on a live grenade to save the lives of his companions, the intuition is that this type of act is undoubtedly a good act, but not one which could have been required of the agent. It seems absurd that we could have said to the agent before his great deed "You are morally required to give up your life to save others". Why absurd? Because giving up one's life is not the normal cost of performing a moral act - it is considerably beyond what we deem to be part of acting morally.

I discuss the issue of cost in Chapter 4.

## ii) Fairness

The second justificatory reason for the optional nature of supererogatory acts relates to fairness. In his example, Urmson makes it clear that the soldier stands in no special relationship to those whose lives he saves (except that they are his soldierly companions); had the deed been demanded of him, he could reasonably have asked "Why me, why not another in the group?" It might be suggested that we only have to do our fair share morally; anything more is optional and supererogatory. There is an obvious problem with this line of justification. If Joe has the opportunity to save two children in the fire, but only saves one because he considers that that was his fair

share, then it would be considered morally odd, to say the least. I discuss fairness in Chapter 5.

iii) Latitude.

We might be able to justify the optional nature of supererogatory acts by establishing some rules of latitude as to when we perform certain types of act. If we perform these acts more often than others, we are deemed to be acting supererogatorily. Small acts of kindness are often thought to be optional and not required. 'How kind of him' and 'He need not have bothered' are the typical response to actions of this kind. Here is an explanation of the optional nature of supererogation which suggests that we need not always seek to perform acts of moral worth; there is a limit to the sphere of morality. If agents choose to extend that sphere by performing more moral acts, then they may do so. We attribute them with specially good moral behaviour - we might even call them saints if they are consistent and far-reaching enough in their performance of such acts. There is something special about their character that enables them to reach a level of moral performance beyond the average. There are problems with this justification of the optionality of supererogation too.

We might expect that the optionality decreases as the cost to the agent decreases. In other words, these smaller supererogatory acts should have more of the flavour of the required act about them - they are in some way less supererogatory. Joe may be a hero and rush into a burning building to save lives, but I do not consider that I am under any obligation to do so. I do not even have to go so far as to formulate an excuse as to why I did not act in the same way as Joe - no-one would expect me to effect such a dangerous rescue. On the other hand, if my neighbour asks me to take in parcels for him, there is a sense in which I cannot refuse to do this without some good

excuse. If I just refused because I didn't want the bother, I could be open to moral criticism.

And yet I might also consider taking in the parcels to be supererogatory. After all, I have no duty to do this. It is purely a favour which may be done or not. However, we rarely look at these smaller acts of supererogation independently of an agent's track record. Perhaps my neighbour is the sort of person who is always doing favours for others. I regard him as a moral exemplar, certainly, but I do not feel obliged to do *all* the small good deeds that he does. So it is not necessarily the case that the smaller the cost to the agent, the more we feel obliged to perform the act. Rather, the latitude may work across a number of such acts. Small supererogatory acts may be optional because we do not have to do acts of moral worth at every opportunity. I discuss this view in Chapter 6.

Here are three key lines of justification for the optional nature of supererogation. Firstly, there is the suggestion that cost incurred by the agent may make an action optional. If we suffer that cost, then our act is supererogatory. Secondly, we may not be required to do more than our fair share. If we do more than our fair share, then that is supererogatory, but it is not required. Thirdly, we may not have to perform a certain type of act on every occasion that it presents itself. If we do so, we have acted supererogatorily.

Urmson does hint at three other justificatory lines we could take in respect of the optional nature of supererogatory acts:



iv) The motivational structure of the ordinary agent.

The first concerns the idea that duties must be within the capacity of the 'ordinary man'. If we demand too much from others by way of duty, then all of morality might be in danger. Urmson says:

'The basic moral code must not be in part too far beyond the capacity of the ordinary man on ordinary occasions, or a general breakdown of compliance with the moral code would be an inevitable consequence; duty would be seen to be something high and unattainable, and not for "the likes of us"'.<sup>24</sup>

This is a common form of justification for the optional nature of supererogatory acts and many discussions of supererogation finally come down to this point: namely, that morality does and should reflect human nature, and part of that is respecting the normal limits of human motivation. According to this line of justification, supererogatory action is a good way of recognising that sometimes we go beyond the normal limits of human motivation. Nagel's account of supererogation is along these lines. He says:

'When we regard people objectively and think about how they should live, their motivational complexity is a consideration...We can take conflict between subjective and objective standpoint back to the objective standpoint on appeal. The result is likely to be that at some threshold, hard to define, we will conclude that it is unreasonable to expect people in general to sacrifice themselves and those to whom they have close personal ties to the general good'.<sup>25</sup>

Whether one plumps for this line of justification or a variant of it will depend partly on whether one is a descriptive or prescriptive moralist. This division mirrors the difference between giving an *explanation* of the optional nature of supererogatory

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<sup>24</sup> Urmson (1958) p.70

<sup>25</sup> Nagel (1986) p.202

acts and a *justification*. Human motivational capabilities may offer an explanation of why there can be good acts which we cannot demand of each other, but provided there are those who are prepared to suggest that our motivational capabilities can be improved so as to make these acts required, not optional, then we must look for a justification that goes beyond the story of human motivation. I shall be noting if particular accounts of supererogation collapse into this view, but I will not be relying on it for my proposal.

v) Moral autonomy

Urmson's second idea suggests that there is a specific value in the fact that one has free choice with regard to certain moral acts. He says:

'Free choice of the better course of action is always preferable to action under pressure, even when the pressure is but moral. When possible, therefore, it is better that pressure should not be applied and that there should be encouragement and commendation for performance rather than outright demands and censure in the event of non-performance'.<sup>26</sup>

In recent literature, this idea has been echoed when it has been suggested that it is important to recognise moral autonomy.<sup>27</sup> One way of establishing that we have moral autonomy is to have a separate classification of acts which we may do if we choose and which may not be demanded of us. Supererogatory acts are one such type of act. So are acts of moral indifference, which Urmson allows for elsewhere in his discussion. It might have been suggested to Urmson that the optionality of morally indifferent acts might be sufficient to allow his concern for free choice to be satisfied. I do not pursue the argument concerning autonomy further.

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<sup>26</sup> Urmson (1958) p.71

<sup>27</sup> See Slote (1985) pp.23-34 as referenced by Kagan (1988) p.236 n.3.

vi) Public and private moralities.

My proposal of an account of supererogation which deals with the two problems stated above is partly related to a third suggestion that Urmson alludes to at the end of his paper. He suggests that there is a difference between what may be publicly demanded of an agent and what an agent may demand of himself. I shall be developing this idea of two aspects of morality in my solution to the two problems of supererogation which I discuss in detail in Chapter 7.

### **1.6 The Betterness Characteristic**

My second key characteristic of a supererogatory act concerns the relationship between the supererogatory act and other morally permissible acts. For an act to count as supererogatory, we take it that there is at least one alternative act which could have been performed by the agent and which would have been morally permissible. That act may or may not have been a duty. The supererogatory act is deemed to be 'better' than that act.

I have not gone so far as to suggest that the supererogatory act is the *best* that the agent could perform. The Betterness characteristic has important consequences for theories such as maximising consequentialism, where the obligatory act coincides with the best that agent can do, thus apparently leaving no room for the supererogatory. I discuss a form of maximising consequentialism which looks as though it may account for supererogation in Chapter 3 .

The supererogatory act might be better than the permissible alternative in five different ways:

i) An extension of duty.

Firstly, it might represent quantitatively more of the same sort of good that was the minimum required by the agent. The supererogatory act is an extension of a duty.

If an agent undertakes her duty and then continues with the same action or type of action that was necessary to fulfil her duty, then we think of this continued action as supererogatory. It was 'beyond duty', although of a similar nature to the duty. The act need be nothing dramatic. Perhaps I volunteer to help out at the church sale. I have the book stall to take care of. I do that *and* I help put everything away at the end.

The difficulty here is twofold; firstly, there is the problem of *justifying* within the moral theory why a duty should stop at a certain point and beyond that point should be considered supererogatory; secondly, there is the problem about the definition of duty. Can we conceptually distinguish between that which fulfils our duty and that which is supererogatory without making some reference to another factor such as 'cost to the agent'? I deal with this problem in Chapter 7.

ii) Strict superiority of one type of good.

Secondly, the supererogatory act might be better than the alternative because it promotes a type of good which the theory recognises as *always* of higher value than that promoted by the alternative act. Many examples of supererogatory acts involve the promotion of an impartial good, where the agent may have permissibly pursued an act which was of a partial nature. Annalena could have stayed at home and pursued her career as a lawyer and teacher. Instead she sought to help strangers in a difficult and dangerous part of the world. On this view, promoting the impartial good is

always better than promoting a partial good, even though the latter is permissible. I consider this view further in Chapter 5.

iii) Better outcome on a single act basis.

Thirdly, the supererogatory act might be better than the morally permissible alternative because of the outcome of the act. This is not quite the same as the second point, where a distinction is made according to the type of good that is promoted. Here what counts is how goods, in the shape of the outcome of the act are given a precedence *on that particular occasion*. If I cook Christmas lunch for the homeless rather than my family, then normal rules of precedence say that such an act produces a better outcome, although cooking lunch for my family is perfectly permissible. This view of the Betterness characteristic relies heavily on the interpretation of the single act. I consider it further in Chapter 6.

iv) Better than a moral holiday.

Fourthly, the morally permissible alternative act to a supererogatory act might be a morally indifferent act with no moral worth at all. Choosing to perform a moral act on the occasion when one could have permissibly done nothing moral at all might be deemed supererogatory. This relies on the idea that there is moral free space, or the possibility of a moral 'holiday', something that will have to be justified for these types of supererogatory act to be so classified.

v) Supererogatory acts embody a special type of good, not found in other types of morally good acts.



Finally, we might consider that the moral worth involved in the supererogatory act is quite different from, and better than that found in the performance of duties in virtue of it being promoted voluntarily. The very fact of its being supererogatory makes it better than the morally permissible alternative. This view is often held by those who consider that actions performed out of duty or obligation are fundamentally different in nature from those which are performed out of love or friendship. For example, McGoldrick holds to the view that there is something important about the purely voluntary nature of supererogatory acts. She claims that heroes and saints are often acting out of love and benevolence and are in a sense 'giving a gift' of love. She suggests that a morality where the supererogatory is obligatory would be impoverished:

'..it is undeniably true that some such acts are the product of nothing more than foolhardiness in the case of the heroic, and a perverted sense of servility in the case of the saintly. But some, and these are the cases which elicit our admiration and praise, are inspired by something more like unselfish love and benevolence. Acting out of love and unselfishness is itself a virtue; and there is more virtue in doing what is not required of us than there is doing what is really more than our duty'.<sup>28</sup>

Problems with this type of view are familiar. Is the moral worth different simply because bringing it about demands a particularly high sacrifice from the agent? (McGoldrick does indeed think that supererogatory acts are distinguished by the high level of sacrifice required by the agent). Or is it a type of moral worth that never forms part of a required act? I think that this view relies heavily on the idea that cost or sacrifice is an important part of the supererogatory act and whilst I pursue this point, I do not consider further the idea that the mere voluntariness of the supererogatory act is the key determinant of its superior moral worth.

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<sup>28</sup> McGoldrick (1984) p.528

I discuss how a supererogatory act might be considered to be better than an alternative permissible act in my proposal in Chapter 7.

### **1.7 The Moral Worth Characteristic**

In all cases of supererogation we consider that the good that results from a supererogatory act must have some specific *moral* value. Precisely what counts as a moral value is of course up to the theorist to determine. The most commonly used examples suggest that the moral value of supererogatory acts is related to the well being of others; the heroic examples relate to saving people's lives; the smaller acts relate to doing good for others. If the good that results from an otherwise supererogatory act has a value which is considered to fall outside the sphere of ordinary morality, such as personal accomplishment as its end or natural affection as its motive, it disqualifies it from being supererogatory. What is in contention is what counts as a moral value, but what does not appear to be contentious is that a supererogatory act is a moral one.

Paradigm supererogatory acts in the modern philosophical literature involve doing good for others, because beneficence is an important value in our modern culture. In earlier times, a life of abstinence or some manifestation of self-abnegation was often taken to be a sign of saintliness or great moral worth. Many of the early saints were considered saintly precisely because of their extraordinary manifestations of self-mortification. For example, the desert ascetics such as St. Antony suffered hunger and exposure to wild beasts for long periods of time. So in these cases, supererogation did not depend on the promotion of other-regarding values over and

above self-interested values.<sup>29</sup> I shall be suggesting that an account of supererogation must take account of a variety of moral values and not just beneficence.

### **1.8 The Rationality Characteristic.**

I suggest that supererogatory acts are usually rational, at least in the sense of being rationally acceptable. Certainly, there is nothing to suggest that they are less rational than other moral acts. Here I make use of Nagel's distinction between the rationally required and the rationally acceptable. A rationally required act has sufficiently strong reasons in favour of it to make it so, but a rationally acceptable act has enough reasons both for and against it so that although the act is not rationally required, it would be not be irrational to perform it either. It is what Nagel terms rational in a weak sense; that is, rationally acceptable.<sup>30</sup>

This distinction between the rationally required and the rationally acceptable is important for my proposed solutions to the two problems of supererogation and I shall return to it in Chapter 7.

### **1.9 My definition of a supererogatory act**

I propose to work with a definition of supererogation which incorporates all four key characteristics. A supererogatory act is one which is:

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<sup>29</sup> Unless we want to interpret all such cases as manifesting love of God above ourselves.

<sup>30</sup> Nagel (1986) p.200



(i) permissible

(ii) of positive moral worth and better than an alternative permissible act

(iii) optional, where optional means both that:

there is at least one other morally permissible act open to the agent

and that:

the supererogatory act is not part of a fulfilment of a duty

(iv) a rationally acceptable act

My definition tells us a more than a basic definition of the supererogatory act such as one which states that it is act which is beyond the call of duty. In proposing it, I am aiming to provide a definition which fits all varieties of supererogatory acts from the saintly and heroic to small favours and acts of mercy and forgiveness. So it should be able to be applied to Joe's Rescue as well as to the Biehl's forgiveness. It is quite distinct from many modern definitions in the literature in three main respects.

Firstly, it does not refer to the sacrifice or cost incurred by the agent in performing the act. I specifically reject the suggestion that cost is a justification for the optional nature of supererogatory acts and discuss it fully in Chapter 4. Nonetheless, this is a popular feature of many definitions as we saw earlier in Rawls' definition. Further, here is Nagel on supererogation:

'Supererogatory virtue is shown by exceptional sacrifice for the benefit of others. Such acts are praiseworthy and are not regarded as irrational, but they are not thought to be either morally or rationally required'.<sup>31</sup>

On these cost-based definitions, volunteering to take my neighbour's parcels in for him scarcely seems supererogatory. It might be mildly inconvenient at most for me, but it certainly does not involve a significant amount of risk taking or sacrifice on my part. Of course, these definitions do sit well with our understanding of examples such as Joe's Rescue or Gianna's Sacrifice.<sup>32</sup> But what about Annalena? There was every indication in a review of her life that she enjoyed the way of life she had chosen. We, the onlookers, might consider it to be a sacrifice to depart from the comforts of the developed world for Somalia, but she may have thought it no sacrifice at all.

Secondly, my definition does not refer to praise and blame. I consider that praiseworthiness and blameworthiness are not specific to supererogatory acts. The performance of duties can also be praiseworthy. Nonetheless, they figure frequently in definitions, often as a substitute for moral worth. For example, Gregory Mellema has the following definition:

'The concept of supererogation is standardly defined as follows. An act is supererogatory if and only if (1) the performance of the act fulfils no moral duty or obligation, (2) the performance of the act is, nevertheless, morally praiseworthy, and (3) the omission of the act is not morally blameworthy'.<sup>33</sup>

'Praiseworthy' and 'blameworthy' in this definition are being used for different purposes. To say that failure to perform a supererogatory act is not blameworthy is to distinguish it from a duty, because it is blameworthy to fail to perform a duty.

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<sup>31</sup> *ibid.* p.203

<sup>32</sup> At least as far as a sketched outline of the examples goes. It is always possible to develop even these examples so that the degree of sacrifice for the agent is minimal.

<sup>33</sup> Mellema G. (1991) p.91

However, it is also not blameworthy to fail to perform a forbidden act and morally indifferent ones too. In calling the performance of the act 'praiseworthy', Mellema seems to take it as given that every act of moral worth will merit moral praise. Could there be some supererogatory acts which did not merit moral praise? Although this goes against the intuitions, imagine that Joe is a self-seeking publicist who gets a thrill from seeing his name in the newspapers. His intention is to save the children in the fire, but his motivation is to be a local hero. If we knew that, would it disqualify his act from the category of the supererogatory? Opinions will differ, but I would at least like to leave open the possibility that some supererogatory acts are not necessarily praiseworthy and so I shall avoid these terms in my definition.

Thirdly, my definition does not specify the nature of the moral worth that is involved in a supererogatory act, whereas Nagel, for example, seems to limit it to acts of altruism. So does David Heyd, who incorporates the following condition into his definition:

'An act is supererogatory if and only if...it is done voluntarily for the sake of someone else's good, and is thus meritorious'.<sup>34</sup>

My examples could all be interpreted as acts of altruism. Perhaps acts of forgiveness and mercy are the best candidates for supererogatory acts which are not altruistic, although my example of the Biehls does in fact show that their particular act of forgiveness manifested itself in acts of altruism towards the individuals and the part of society responsible for their daughter's murder.

However, consider another possible example of a supererogatory act, one that is perhaps not very intuitive. If developing one's talents is a duty, then developing one's

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<sup>34</sup> Heyd (1989) p.117

talent to a greater degree than normal might be considered supererogatory. Take the example of Evelyn Glennie, the Scottish percussionist. She has been profoundly deaf since childhood, yet with a great musical gift, which she has now developed to the extent of being a musician with worldwide recognition. Given her difficulties, she need not have worked as hard as she has done in the furtherance of her talents and we might consider her efforts in this regard as supererogatory. Yet they are not altruistic. Thus, I am unwilling to narrow my definition of supererogation to altruistic acts.

My definition does however embody all four key characteristics. The Optionality characteristic is expressed by stating that a supererogatory act must be permissible and not forbidden (Condition i) and that such an act it is not a duty and that there is a permissible alternative (Condition iii). The Betterness characteristic is expressed by Condition ii). Conditions ii) and iv) are simple statements of the Moral Worth and Rationality characteristics respectively.

In the following chapters, I shall see whether the four characteristics can be sustained, bearing in mind both that I want to hold on to the key characteristics thrown up by our intuitions, and that I want the definition to be applicable across the range of supererogatory acts. In addition, I must be able to offer a justification as to how acts so defined can form a separate class within moral theory. In attempting to provide a justificatory account of supererogation, I expose the considerable tensions which exist between the different characteristics; tensions which are encapsulated in the two problems which I raised at the beginning of this chapter.

Firstly, there is the problem of requirement. If supererogatory acts are so good why are they not required? What justification can be given for supererogatory acts to be optional rather than required? The first problem emphasises the tension that exists between the Betterness and Optionality characteristics. Secondly, there is the problem

of rationality. What kind of moral reasoning process could there be that allows an act which is better than another to be optional without either the supererogatory act itself or its omission being irrational? The second problem focuses on the tension that exists between the characteristics of Rationality and Optionality. In the next chapter, I consider a forceful objection to supererogation which stresses the difficulties of the two problems.



## **Chapter 2 A Major Objection to Supererogation**

### ***2.1 Rejecting the Optionality and Rationality Characteristics***

Supererogatory acts are especially good. We might expect them to be given pride of place in a moral theory. Not everyone welcomes the idea of supererogation, however. Some theorists find the idea of the moral saint damaging to the institution of morality as a whole, or even plain repellent.<sup>1</sup> Others think that supererogatory acts are really required acts and they are only optional because most of us are weak-willed and prone to lose the motivation to do the right thing when the going gets hard.

Shelly Kagan has mounted a comprehensive attack on all optional acts in morality which addresses this last point.<sup>2</sup> Supererogatory acts are an important class of optional acts, although Kagan never once uses the term 'supererogation' in the work I consider here. I am going to use his account as the 'model' consequentialist attack on supererogation and I shall discuss it in detail in this chapter. Where Kagan uses the term 'options', I shall normally refer to supererogatory acts.

Kagan directly addresses the two problems of supererogation that I have raised in the previous chapter. The first problem concerned the pressure of requirement brought about by very good acts. It embodies the tension that exists between the Optionality and Betterness characteristics of the supererogatory act. If an act is very good, or even merely better than an alternative permissible act, then it is puzzling that the act is optional and not required. If an agent treats such an act as optional, he has to justify why he does not perform it. Such is the pressure of requirement brought about by acts which are better than other permissible acts. Kagan is a maximising consequentialist and so his claim is that if an act is very good to the extent of being the best that we

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<sup>1</sup> See especially Wolf (1982) and Baron (1987). I refer to Wolf's views briefly in Chapter 3 and Baron's in Chapter 6.

<sup>2</sup> Most notably in Kagan (1989), which is the work I draw on for this chapter.

can do, then we are required to perform it. It is not optional. If an act is not the best that we can do, then it is forbidden. He argues that any attempt to justify why agents might treat such acts as optional are doomed to failure.

The second problem I raised concerned the rationality of supererogatory acts and the process of moral reasoning surrounding them. The problem can be stated like this: if there are good reasons to perform act A, rather than act B, then it is rational that an agent perform act A and irrational that he perform B. Optional acts such as supererogatory acts appear to have a structure such that there are good reasons to perform act A *and* good reasons to perform act B. Yet in the case of supererogation, we assume that one act, say act A, is better than act B, according to the Betterness characteristic. This would seem to generate morally decisive reasons in favour of performing act A. How then, can it be rational to perform act B? There is tension between the Optionality and Rationality characteristics. Kagan's claim is that no reasoning structure can be found which supports optional acts such as supererogatory acts. If one act is better than another, which appears to be true in the case of supererogation, then Kagan states that this will provide a morally decisive reason to perform it. In my terminology, he is claiming that no form of reasoning structure can be found to support an act which has both the Betterness and Optionality characteristics.

In this chapter, I discuss Kagan's argument against supererogation in detail. I first outline the argument, then examine critically the key steps in it. In further chapters, I shall refer back to Kagan's argument and consider its success in relation to other accounts of supererogation.

## **2.2 Kagan's argument against options in morality**

Kagan's argument proceeds by attacking ordinary morality. He claims that it is inconsistent because the followers of such a morality believe both that they always have a reason to promote the overall good and that they have moral options. They are therefore exposed to the two problems stated above and Kagan's claim is that there is no way for ordinary moralists to resolve these problems. These problems must be resolved, however, if we are to give an account of supererogation. Kagan's project is to expose the inconsistency in ordinary morality and thus show that the more demanding morality of a rigorous consequentialist is the most plausible position to hold. The dramatis personae in his account are the moderate, the extremist and the minimalist and they are distinguished as follows:

The moderate is an upholder of ordinary morality and he defends the idea of supererogatory acts in morality; that is, he believes that supererogatory acts can be deontically distinguished from other types of act, so that they merit separate classification. The moderate occupies a position between the minimalist who thinks there are few if any required acts, and the extremist, who thinks moral acts are either required or forbidden. The extremist's morality may turn out to be very demanding compared with that of the moderate or minimalist, but Kagan thinks this is the only defensible moral position.

In common with the extremist, but unlike the minimalist, the moderate always has a *pro tanto* reason to maximise the overall good. A *pro tanto* reason is one which has weight, according to Kagan, but 'nonetheless may be outweighed by other

considerations'.<sup>3</sup> Without this reason, the moderate would not be able to explain how many of the obligatory acts in ordinary morality come to be required. This is because ordinary morality frequently demands that we act in such a way that we promote the overall good.

There are four key steps in Kagan's argument against the moderate's position. Firstly, we are required to maximise the overall good, which is an impartial good. Secondly, everyone always has a *pro tanto* reason to maximise the overall good. To allow for the possibility of supererogatory acts, the moderate needs some countervailing considerations to balance against this *pro tanto* reason. Next, Kagan suggests that these countervailing considerations are inevitably linked to what he calls an 'appeal to cost'. The appeal to cost means that a moral agent can consider an act optional that would otherwise be required because it demands too much of him. Kagan argues that appealing to cost is the only explanation that the moderate can give for sometimes viewing the demands of the *pro tanto* reason as optional. Finally, Kagan claims that in order to support this appeal to cost, the moderate must establish that there is a set of moral goods which is separate from the goods which make up the overall good. The overall good is impartial and the goods which make up the overall good are objective in that sense. The goods which the moderate needs to establish to tell his justificatory story of overdemanding cost are therefore subjective, according to Kagan. These subjective goods will produce agent-relative reasons<sup>4</sup> which will compete with the *pro tanto* reason which stems from the objective overall good. These two types of reason will then generate options in ordinary morality.

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<sup>3</sup> Kagan (1989) p.17. Kagan is careful both to distinguish the *pro tanto* reason from the *prima facie* reason and also to claim that in his use of the latter term W.D. Ross was actually mistaken. Ross, too, should have referred to *pro tanto* duties, according to Kagan.

<sup>4</sup> I discuss agent-relative reasons below at 2.8.

To summarise, Kagan claims that appealing to cost, interpreted as the loss of certain subjective goods, is the only argument available to the moderate if he wants to justify supererogatory acts. It fails, he argues, because the moderate cannot show why the sort of goods he classifies as subjective are not encompassed by the overall good. Further, says Kagan, even if the moderate could adequately demonstrate this, it would not in itself be enough to generate options. The moderate would have to explain how the existence of agent-relative reasons, which are reasons which stem from these subjective goods, would not generate *requirements*, rather than optional acts such as supererogatory acts. This is because Kagan does not think that the moderate can come up with a form of moral reasoning that will offer an option.

I disagree with Kagan on two counts. Firstly, I claim that the moderate does not have to appeal to cost to justify the optionality of supererogatory acts. Indeed, I shall argue in Chapter 4 that an appeal to cost fails to provide adequate justification for the optional nature of supererogatory acts.<sup>5</sup> Secondly, following from this first point, the moderate does not need to demonstrate the existence of subjective goods which are separate from the goods represented in the overall good.

My proposal for the solution to the two problems of pressure of requirement and moral reasoning is in two parts. Firstly, it relies not on an appeal to cost to facilitate the optionality of supererogation but on the existence of indeterminate rankings in our moral reasoning process. Secondly, I suggest that in some cases of supererogation there is a dual aspect in operation, whereby the agent sees his act as required but the onlooker sees it as optional. In this second part of the proposal, I am appealing to a distinction between a subjective and objective view of morality in the sense that there

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<sup>5</sup> In arguing that the appeal to cost does not justify the optionality of supererogatory acts, I find myself in agreement with Kagan, but my reasons for saying that the appeal to cost fails are completely different from his, as I make clear in Chapter 4.



is a difference between how the agent and the onlooker judge the act deontically. However, I shall argue that this is not the same subjective/objective distinction that Kagan argues against when discussing the composition of the overall good.

Kagan's argument against supererogation therefore relies on four separate points. Firstly, there is the claim that maximisation of the overall good is a determinant of moral requirement. This bears directly on the first problem I have noted, that of the pressure of requirement. Unless some way can be found to limit the maximising requirement, we must always do our best and there will be no room for supererogation. Secondly, and in relation to limiting requirement, Kagan suggests that the only argument that can be run to limit the requirement of maximisation is based on an appeal to cost. Thirdly, for the moderate to make an appeal to cost, he needs to establish certain goods which stand outside the overall good and which will generate subjective or agent-relative reasons. These subjective reasons will be weighed against the objective reasons which are generated from the impartial overall good. Fourthly, there seems to be no way in which even these two types of distinct reason can be structured so as to generate an option, rather than a requirement. This relates directly to my second problem of rationality.

With regard to maximisation, both Kagan's moderate and I are arguing in favour of a plausible justification of the Optionality characteristic, so it might seem that we cannot be maximisers if we also want to sustain the Betterness characteristic. If it is always required that we do the best act that we can, and that failure to do so is forbidden, then there appears to be no place for optional moral acts. In other words, if maximising the overall good determines which acts are morally required, then no maximising consequentialist could offer an accommodating account of supererogatory acts. Kagan is clear about this. His opening claim is that 'morality requires that you

perform.... that act which can reasonably be expected to lead to the best consequences overall'.<sup>6</sup> I shall call it his maximising principle.

It is perfectly legitimate, of course, to disagree with this claim as the sole claim in morality and add other claims depending on the view of morality that one might hold. This might be a morality which requires attainment of personal moral perfection through doing one's duty, perhaps constructed along Kantian lines. Or we might be required to lead the best life we possibly can, where morality is construed as a composite of living well and doing right. Kagan suggests however, that if we agree with his maximising principle *in any shape or form and with whatever modification*, then we will have to accept some uncomfortable adjustments to our view of morality. I concede that the moderate sometimes accepts the maximising principle and uses the *pro tanto* reason as a decisive reason in moral reasoning, although I shall be offering a different interpretation of it. That concession is all that Kagan needs to progress with his argument.

Kagan then interprets his maximising principle to give the extremist's position in morality. According to the extremist, there is no end to what we may be called on to sacrifice in the name of morality in order that we contribute to the overall good. We can see from this interpretation of the extremist position that there will be no logical space for supererogation in this theory. There will be no room for the Betterness characteristic, as the agent must always do his best. Acts considered supererogatory by ordinary morality may well be required acts<sup>7</sup>. This leads to some uncomfortable examples - just what the extremist wants! Gianna Molla gave up her life to save the

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<sup>6</sup> Kagan (1989) p.1

<sup>7</sup> Some may even be forbidden, if they fail to maximise and are simply better than an alternative that is permissible in morality, but not the best. Or they may maximise a type of good that does not comply with the nature of the good in Kagan's theory.

life of her unborn child, when she might have saved her own life. On Kagan's view, if it will contribute to the overall good that Gianna should give up her life to save the life of her unborn child, then she must do so. If she had not done this, then she would have fallen short of moral demands. In doing so, she was no saint, as the Catholic Church decreed, but instead she was merely acting in compliance with moral demands. The maximising principle might seem to be enough in itself to render supererogation an impossibility in a theory. However, an attempt has been made to show that maximising consequentialism can accommodate supererogation. I discuss this and other aspects of maximisation which bear on supererogation in Chapter 3.

In this chapter, I shall discuss Kagan's arguments in respect of the remaining three points. Firstly, I address the appeal to cost. I then consider the nature of the overall good. Finally, I discuss Kagan's view of the reasoning process.

### ***2.3 How does the moderate's 'appeal to cost' work?***

Kagan does not think that appealing to cost to the agent can justify the existence of supererogatory acts. I agree that cost cannot justify the optional nature of supererogatory acts. This is an unusual position to take for someone who supports the separate classification of supererogatory acts as ultimately many definitions of supererogation rely on cost as an explanation and justification for why the act is not required. For example, in Chapter 1, I referred to the definitions of supererogatory acts given by Nagel and Rawls, both of whom suggested that supererogatory acts would be required were it not for the extreme cost incurred by the agent in performing them. I give my reasons for rejecting cost as a justification in Chapter 4. My reasons for rejecting the appeal to cost are quite different from Kagan's, however. Here I outline Kagan's arguments for rejecting the appeal.

Kagan thinks that an appeal to cost is at the bottom of every attempt to justify supererogatory acts in the moderate's morality. He demonstrates that other arguments to support options ultimately collapse into an appeal to cost.<sup>8</sup> According to Kagan, the moderate appeals to the cost of performing what would otherwise be a required act and so he makes it optional. 'Cost' means that if the agent performed that act he would suffer the loss of some kind of value or good. This would be a subjective good - subjective in the sense that it falls outside the overall good. The moderate acknowledges that we fail to do acts which would otherwise be required because they are too demanding. They are demanding precisely because they force him to give up some kind of good.

Kagan is right to suggest that the appeal to cost is a very plausible story. However, his argument depends on its being the *only* argument that the moderate can run. Here is an example he gives to demonstrate that:

'For at some point the moderate is going to have to fend off the minimalist's claim that agents are *never* required to promote the good-even when it takes no sacrifice to do so. The moderate may not believe that I am required to devote myself to famine relief; but he does believe that I am required to save the drowning child. Thus he must point to some relevant difference which allows options to be grounded in the former case but not the latter. And it is difficult to see how anything other than the difference in cost to the agent could be plausibly suggested.'<sup>9</sup>

The moderate's position is that if he can effect the rescue of the drowning child easily he is required to do it. Saving lives is a good thing and we ought to do it if we can. We can save plenty of lives by devoting ourselves to famine relief, but this is not quite so easy. I have to commit myself to a particular way of life, give up my creature comforts, my career ambitions and other goods which I may value. So the moderate

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<sup>8</sup> In particular, Kagan considers and rejects the possibility that the existence of rights could allow for options. Kagan (1989) pp.219-230.

<sup>9</sup> Kagan (1989) p.384

says that this set of acts, whilst desirable, is not required, because it would involve the loss of too many and too much of these subjective goods. In other words, it is optional because it costs too much. I agree with Kagan that this sort of example lends credibility to the appeal to cost, but I disagree that it conclusively demonstrates that there is no other story the moderate can tell about why such acts might be optional.<sup>10</sup> I discuss this further in Chapter 4.

What counts as cost? Kagan gives a comprehensive picture of what constitutes costs, saying that 'money, time, effort and life itself can be consumed in the course of my reacting in an optimal manner'.<sup>11</sup>

I suggest that the moderate might want to be more careful in distinguishing between these types of cost. He might claim that it is a very different matter to be asked to give your life in pursuit of the greater good, rather than some, or perhaps even a great deal, of your money. Kagan will not allow that type of distinction, regarding all sacrifice as a matter of degree, although it is perhaps telling that he does not explicitly discuss cases where an agent would be required to give his life or his body parts in the pursuit of the general good. Instead his examples focus on the financial or 'comfort' aspect of cost. It would have been good to see Kagan attempt to make his argument work if he discussed cases where agents had to give up their lives or the lives of their children in pursuit of the overall good.<sup>12</sup>

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<sup>10</sup> My arguments in favour of supererogation are not designed to show that every example of a supererogatory act in ordinary morality can be justified as such. Some may well turn out to be required. There are particular difficulties justifying the optional nature of acts which aid strangers. I discuss these in Chapter 5. However, my arguments are based on the claim that moral theory should be able to support a wide variety of supererogatory acts.

<sup>11</sup> Kagan (1989) p.232

<sup>12</sup> Peter Unger (1996) does attempt this.



In these extreme cases where the sacrifice of the agent's life is at stake, some utilitarians have recourse to the argument of disutility, where it is argued that requiring agents to give up their lives or body parts can never be justified because it would undermine the institution of morality to such a degree that the promotion of greater good would be under threat. Utilitarians of a stronger stomach might be tempted by the adoption of certain metaethical propositions about the nature of persons, so that they would argue we should be more willing than we are to contemplate the sacrifice of our life in the pursuit of the greater good.<sup>13</sup> Nonetheless, we should mark the fact that Kagan does not make much of the distinction between the cost of giving one's life and the cost of giving up a substantial part of one's wealth. Even if this is a distinction worth preserving, it still leaves a considerable job to do in explaining what the justification is for types of supererogatory act which do not require such a sacrifice. It is true, after all, as Kagan claims, that cost in one form or other is the most common source of justification used by ordinary morality for all types of supererogatory acts, not just the saintly and heroic kind.

Having established that it is the agent's interests which are at stake in the appeal to cost, Kagan then raises the question as to whether interests should incorporate only the agent's self-interest or be broadened to include his other interests (which might include the welfare of others, as he correctly notes). This seems right. Joe might not only refuse to go into the burning building because he is concerned about the loss of his own life and limb, but he might also consider the effect that losing his life or suffering serious injury would have on his family. So the interests that make up the appeal to cost are very wide.

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<sup>13</sup> For example, Derek Parfit suggests that his particular conception of personal identity makes it easier for him to understand how much he must do for others. See Parfit (1984) p.281

Kagan shows next that not only must the appeal to cost be wide in that it covers all kinds of interest, it must also extend to very low levels of cost such that it becomes implausible. This is where the appeal to cost becomes a problem. Using my examples, Joe could appeal to the significant cost of life and limb if he declines to go into the burning building to effect a rescue. However, I could also plausibly appeal to the cost of missing my lecture if I refuse to take in my neighbour's parcels whilst he is away, even if missing the lecture does not significantly affect my career or lower my quality of life. The cost here appears to be quite insignificant, yet enough for the moderate to use it as an excuse not to perform a good act.

What happens when there is no discernible loss of a good to which the moderate can appeal? Some moderates allow acts to be optional, just because the moderate wants to do nothing in particular instead. If I feel like lazing around the house instead of doing some work for charity then, Kagan suggests, many moderates think that acceptable. Kagan claims that the moderate has to dig deep in the barrel of justification and come up with a story about infringement of moral autonomy to preserve this type of option. He says:

'...moral autonomy is simply a matter of whether a given reaction is permitted or forbidden. But this means that talk of moral autonomy cannot explain or justify options: such talk is simply an alternative way of referring to the exact same facts that we are already referring to when we speak of the existence of options in the first place.'<sup>14</sup>

I agree with him that the appeal to autonomy is unsatisfactory. Kagan is right to signal that the moderate's appeal to cost is in trouble where the level of cost has dropped to be so small that it is apparently insignificant. In his rejection of an appeal to moral autonomy, he appears to not to allow the moderate the possibility of time off from

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<sup>14</sup> Kagan (1989) p.237

morality - a moral holiday. But his position here is not clear and, since moral holidays allow an opportunity for supererogation, I discuss the point in more detail.

#### **2.4 Is Kagan's moderate allowed a moral holiday?**

Supererogation can occur in the context where the agent has to choose between acts of contrasting moral value. If he chooses the act with greater moral value, the act has the Betterness characteristic and he has acted supererogatorily. Secondly, it can occur in the case where he can choose between performing an act of moral worth and performing an act with no *moral* worth at all. If he chooses the act of moral worth, then the act still has the Betterness characteristic, because it has greater moral value than the non-moral alternative act, which has none.

There are two aspects to the appeal to cost, then. The first takes place entirely within morality, where the options are between two acts each of which has some moral value. The second type of appeal to cost recognises that there is a limit to morality and that there are other goods which can be pursued outside morality and sometimes instead of moral goods. Here the moderate is concerned with generating an option between an act which promotes moral worth and which if performed will be supererogatory and an act which has no moral value at all. He therefore must appeal to the cost of performing a moral act as opposed to a non-moral act.

Moderates usually do want to claim that they have the option of acting morally or non-morally on certain occasions. Sometimes this is when the cost of acting morally is low, as in the case of small favours. The opportunity is not confined to acts of small moral worth, however. Joe, who takes the option of entering a burning building and performing a supererogatory act of saving lives, might have quite permissibly continued on his way in pursuit of some non-moral good or no particular good at all.

At first, it appears that Kagan cannot allow a moral holiday for two reasons. Firstly, when there is something moral that can be done, then it must be done, because it promotes the greater good. Secondly, on Kagan's view the opportunity to do moral good is always with us, as he explicitly rejects the distinction between harming and not aiding. I will not repeat his arguments here as they are familiar in the more general discussion about the distinction about doing and allowing. Suffice to say that given the extent of world poverty, there is always something we can be doing to alleviate the suffering of others and therefore, on Kagan's view, there is always something moral we are required to do.

If this starts to sound excessive and far too demanding for the moderate, then it suits Kagan's story of the extremist well. 'Why do you think they're called extremists?'<sup>15</sup>, he asks, and it is difficult to know whether this is tongue in cheek or not! But on two occasions Kagan gives us reason to think that we might take a break from morality.

Firstly, when discussing the value of personal relationships, he considers that it might not make the agent the most effective at promoting the greater good if he were promoting the good all the time:

'..it may be that we mistakenly think of the agent who is in pursuit of the good as frantically running around, pushing himself in every direction, until he drops from exhaustion. Such a person would have no time to establish genuine relationships, and no room in his life for love or friendship. But most likely such a person would not actually be making his greatest possible contribution to the good either. In contrast, an individual who shapes and carries out a life plan with an eye to promoting the good is likely to make a greater contribution in the long run.'<sup>16</sup>

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<sup>15</sup> *ibid.*(1989) p.270

<sup>16</sup> *ibid.*(1989) p.368

This is a surprising lapse from Kagan, who is otherwise relentless in his argument. Allowing for the adoption of a 'life plan' surely gives the moderate a window of opportunity for options and particularly supererogation. It would mean that the agent who performs a supererogatory act is the one who is the most productive at promoting the greater good. On this view, the difference between the saint and the ordinary good guy is that the saint is just better at conserving his moral energy. He has a more efficient life plan, so he can fit in more moral acts than average.<sup>17</sup> Many moderates would be happy to say that they do indeed promote the greater good, but that they need to live in a certain way to be able to achieve their maximum moral performance. Just talking with friends, resting after working hard... breaks from moral action need not be fantastically luxurious or self-serving to serve their purpose of refuelling the engine of morality.

Secondly, Kagan sees the nature of the good as principally welfarist, despite not wanting to give a specific content to the overall good. If problems such as world poverty were rectified in an ideal world, then Kagan suggests that it would be desirable for agents to lead the lives that they choose without the ever-present maximising principle operating in respect of one dominant good. Supererogatory acts might be possible in an ideal world, where some agents would choose to promote the overall good (whose content might now be of a somewhat different form) on more occasions than others.

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<sup>17</sup> Kagan might respond to this allowance of a moral holiday by saying that his arguments nonetheless show that the moderate is still required to do much more than the moderate would want to do. But it is important to remember that Kagan wants to show that it is *impossible* to set limits on requirements and if the moderate can limit what he has to do by appealing to a wider life plan then this weakens Kagan's argument. It effectively allows a two-level type of utilitarianism.



I suggest that Kagan's approach to moral holidays offers the moderate an opportunity for supererogation, but they would not allow for the full variety of supererogatory acts that we see in ordinary morality.

Kagan's attack on the moderate's appeal to cost centres on the point that the moderate cannot put a limit on the degree of cost that he wants to use to justify the failure to perform supererogatory acts. The moderate wants to use the cost of giving up his life at one end of the scale and yet appears to have to use cost as a justification for failure to perform supererogatory acts which have very little or no cost involved at the other end of the scale. Two aspects of Kagan's attack on the appeal to cost could be challenged. Firstly, a case could be made for distinguishing the cost of giving up one's life from all other costs. Secondly, the case for a moral holiday could be developed. If these challenges were successful, then certain types of supererogatory act might be allowable on Kagan's theory. I discuss the appeal to cost in Chapter 4.

I now turn to the third plank in Kagan's argument against the moderate, which concerns the nature and the structure of the overall good.

## ***2.5 The nature of the overall good***

Kagan's overall good is comprehensive. It includes all goods that an agent might value; not just the self-interest of the agent, but all his interests. It also includes each and everyone's individual well-being. However, the impartial nature of the overall good means that sometimes some of the goods which make up the overall good must be sacrificed either in favour of other component goods or in favour of a greater amount of the same good.

Kagan frequently uses examples to show that the extremist values all the same types of goods that the moderate does. However, the extremist must give these goods up in favour of the well-being of others if there is a choice. Given the state of world poverty, the extremist must give up the valued pursuit of art, good food, leisure and numerous other goods which Kagan allows to be part of the overall good, in order to promote the basic well-being of others. In other words, there is an implicit master-value in Kagan's overall good which is used as the common scale against which all the component goods must be measured to see how great is their contribution.

If goods of the same kind are up for comparison, then Kagan's agent must act so that he promotes the maximum value of that good. This is true even in the case of individual well-being. In Kagan's example where only two lives may be saved out of three, Nahman is the unfortunate who is left to sink so that others can be saved. Kagan suggests that the moderate thinks that Nahman's well-being matters in its own right and the moderate objects that the 'overall good' of saving two lives out of three is somehow distinct and alien from the concrete fact of Nahman's well-being. In other words, the moderate thinks that Nahman's well-being constitutes another good, or part of the good which is not encompassed by the overall good. Kagan sets out the moderate's position as follows:

'The good is something separate and potentially opposed to Nahman: forced to choose between the two, the sceptical moderate proclaims that his allegiance is to Nahman himself, rather than to the abstract objective good; to answer otherwise would be to view Nahman as of importance only *because* his well-being potentially helps to realise the good.'<sup>18</sup>

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<sup>18</sup> Kagan (1989) p.58

Kagan claims that this is a mischaracterization of his conception of the good as instrumentalist. Contrary to the moderate's fears, Nahman's well being:

'is no mere instrument to the realisation of the good - it is the very *stuff* of which the good consists. The overall good is not some distinct and separable goal, for the sake of which one promotes the welfare of individual persons. On the contrary, the overall good simply *is* the overall well-being of individual persons. (At least this is so in large part; there may well be other components to the good as well, for example, equitable distribution of well-being. But the point remains that the overall good is not something distinct from the presence of the various goods - and the absence of the various evils - of which it consists)'.<sup>19</sup>

Good news for Nahman, then! He dies with two consolations. The extremist considers his well-being to be part of the overall good. Secondly, it is only 'reluctantly' that the extremist will forgo the opportunity to save him. Kagan's extremist is frequently acting reluctantly or with regret or otherwise bemoaning the loss of goods that the moderate thinks of value. I take it that this process of 'regretting the remainder' is supposed to demonstrate that the extremist values what is lost and considers it part of the overall good in some way. It is important to Kagan's argument that the moderate should not be able to demonstrate that there is some further good which is independent of the overall good. This would give the moderate the opportunity to reason that the loss of this further good could be set against the promotion of the overall good and thus generate the possibility of options. Kagan's overall good must, therefore, include all moral goods. It must be comprehensive.

The overall good is also impartial in the sense that no one person's life or interests counts for more or less than anyone else's. Kagan describes the extremist in the Nahman example as choosing between:

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<sup>19</sup> *ibid.* p.58

'three concrete goods - three individual lives- and I have chosen to save two lives rather than simply one: those two lives are not a mere instrument to the realisation of the greater good in this case - they *constitute* the greater good.'<sup>20</sup>

The moderate might find this puzzling, I suggest. The extremist had claimed that Nahman's well-being was the very *stuff* of which the good consists. But he's the one to die and the other two lives now constitute the greater good. That's just because it is *two* lives rather than one, the moderate will claim. Here is the crucial difference between the extremist and the moderate. The extremist is a maximiser first and foremost, but he is also an impartialist in the sense that Nahman as an individual doesn't count for any more or any less than the other two. That is why aggregating numbers of lives delivers the greater good and it is of no consequence as to whose lives they are. The moderate is sometimes a maximiser, but he is always exercised by the idea that Nahman just might matter more to him than the other two. Then he would not be able to maximise by way of counting lives. Indeed, if Nahman is his little son and he can either save Nahman or two lives, then he ought not to maximise by saving two lives instead of one. He ought to save Nahman as his first priority.

Kagan is insistent that the overall good cannot be contrasted with the various goods that compose it. There may be various goods that compose the overall good, but the overall good does not fragment in such a way that the components can be assessed singly and then weighed or otherwise compared with the remaining totality in a process of moral reasoning. So, for example, Nahman's father could not weigh the value of his son's life against the value of a distinct 'overall good'.

Instead, I take it that Kagan's reasoning works like this: if two components of the overall good are in competition, they are assessed as to their contribution to the

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<sup>20</sup> *ibid.*p.59

overall good. That which makes the greater contribution indicates the act which is required. The overall good is the common scale by which all other goods are assessed. In the Nahman case, his father would have to weigh the contribution which his son's life makes to the overall good and compare it with the contribution the two other lives would make to the overall good.

We would normally assume there to be some kind of ranking of goods in that case. In the Nahman example as Kagan frames it, we are comparing like with like except for the quantity. We can save one life rather than two, so two is a greater contribution to the overall good. On my version, Nahman's father appears to rank his son's life as more valuable than the other two. This ranking might be justified to him in the simple human way that the value of his son's life to him as a parent is a very high value indeed, outstripping the value of any number of strangers' lives. Or it might be justified in a more impartial way, by suggesting that the value to the overall good of a parent so regarding the value of a child's life again outstrips the value of saving the lives of strangers. In any event, some ranking of goods in terms of their contribution to the overall good will be required on Kagan's account.

As I interpret Kagan, in addition to insisting that the overall good is comprehensive and impartial, he takes it for granted that the overall good will have some form of master-value against which the component goods can be assessed as to their contribution. It is the method of assessing the contribution of the component goods to the master-value that is the bar to supererogation, rather than the selection and nature of the component goods. If what I am required to do is determined by how much contribution it makes to the welfare of others, which is Kagan's implicit master-value, then many optional acts in ordinary morality will be forbidden and many supererogatory acts will be required.



When Kagan says that 'disagreements over the *contents* of the overall good does not in itself call into question the existence of a pro tanto reason to *promote* the good',<sup>21</sup> he is right. The moderate who attempts to criticise Kagan because he does not want to lose certain goods from the set which may be promoted is misdirecting his fire. It is the *structure*, rather than the content of Kagan's overall good which is the stumbling block to optional acts and supererogation. Kagan has a teleological structure of value, assuming that whatever the good is, it is that which must be promoted.<sup>22</sup>

I shall be developing this argument about the nature of the good in Chapter 7 and putting forward a view which relies on plural values, rather than one overall good; where values can be compared against each other, rather than against a master value. Nonetheless, Kagan assumes that his moderate opponent will rely for his source of criticism on the issue of missing goods, which will constitute the source of the cost to be paid if the agent performs a supererogatory act.

## **2.6 Which goods might the moderate consider to be subjective?**

In the final part of his argument against options, Kagan suggests that if the moderate is to justify agent-relative reasons he must isolate some special subjective values generating that type of reason which are distinct from the agent-neutral reasons which stem from the objective overall good. These are likely to be values which incorporate that weighting or bias in favour of the agent's interest which is inherent in an agent-relative reason. They are connected with the appeal to cost, because if the moderate is forced to give up these values, he will suffer from a loss of interest in that

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<sup>21</sup> *ibid.* p.64

<sup>22</sup> Both the idea of a master-value and the suggestion that Kagan's structure of value is teleological come from Scanlon (2000).

the bias in his favour will have been taken away. Kagan suggests that the moderate can propose the following types of subjective goods:

i) Perfectionist goods

The moderate claims that there is value in retaining opera, ballet, flower-gazing and, beautiful music, even if this is at the expense of some people starving. Without these values, the world would not be an ideal world. Something would be missing. It is not clear to me that why Kagan thinks that the moderate necessarily thinks that they form part of the subjective set of goods, but it is clear that Kagan will not allow them in the objective viewpoint. This is because perfectionist goods are not maximally productive and are resource inefficient, according to Kagan, and so they cannot form part of the objective viewpoint and therefore part of the overall good.<sup>23</sup> So despite his disclaimer above, Kagan does in fact have some conditions on the content of the overall good, although his position is not entirely clear. Kagan does not provide an adequate response to the argument in favour of classifying these goods as subjective, except to say that the extremist, who has to disallow them, *regrets* the passing of these goods and that there may be an argument for maintaining some kind of archive (a Museum of How to Have Fun?) until an ideal world is restored.

Kagan is also a little disingenuous, emphasising the contrast of 'expensive' and 'luxurious' goods with the basic needs of the poor and hungry. Perfectionist values need not of course involve expense or luxury, as his flower-gazing example recognises. This is a slightly more serious point than first might be thought. The way in which flower-gazing might be luxurious is that it permits an agent pleasurable

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<sup>23</sup> The argument for retaining these goods even in the light of great human need is Susan Wolf's. Wolf (1982).

time-off from 'harder' moral duties such as working for the relief of world poverty. Thus it might be that Kagan is suggesting that the reasons generated from the objective overall good necessarily result in a demand that we never rest from promoting the good if there are still basic needs to be met.

Kagan does allow that:

'it might be that a greater contribution to overall good would be made by promoting the arts than by diverting those resources to famine relief. (A pluralist theory of the good might give the existence of art considerable value in its own right; or it might be that art simply pays its way in terms of its overall contribution to human well-being).'<sup>24</sup>

Many moderates do think this a possibility, but it is important to remember that winning the maximising battles will not help the moderate justify options. For if perfectionist goods can sometimes win the contest of promoting the overall good, then they are presumably legitimate basic goods and part of the overall good after all. Sometimes this happens. Recall the fierce battles for art funding that regularly ensue in the face of cut-backs from the government. Even when a direct comparison is made with lives that could be saved if funds were directed to health services, art impresarios and administrators hold firm, convinced that a world without art is an unacceptable world.

Kagan has said earlier that he does not need to be precise about the contents of the overall good, although he has in fact specified two components, the well-being of individuals and the satisfaction of their interests. He has admitted that there may be other components and, although he initially appears to disallow perfectionist goods, this last comment allows for some doubt on the matter. If he did allow perfectionist

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<sup>24</sup> Kagan (1989) p.359

values to be part of the overall good, it would take the steam out of the moderate's argument. We know, however, from the general tenor of his discussion that Kagan does not want to allow perfectionist goods into the overall good. To be generous to him, this is because his project to support the extremist stems genuinely from a belief that, given world poverty, morality should be principally concerned with the well-being of everyone and this will require those of us with excess resources to sacrifice them. Being less kind, if he did allow them in to the overall good (and allow them to win out sometimes) then his extremist would not have such an exciting story about the demandingness of morality to tell.

The moderate has his problems with perfectionist values too. If he thinks they stand outside the overall good but still within morality, he has to find an argument to support this. It is easier to suggest that they stand outside morality altogether, although they can be weighed against moral values and are somehow morally acceptable. This would allow the moderate agent some form of option and the possibility of supererogation. If the moderate chose the perfectionist value over the moral value, he would be making a morally legitimate choice. If he chose the moral over the perfectionist value he would supererogate, because his chosen act would have some moral worth that the alternative permissible act would not.

The fact that goods can be introduced or left out of Kagan's overall good according to whether we are in an ideal or non-ideal world suggests that there is a hidden precedence already at work in his overall good. In other words, he takes it for granted that basic welfare for everyone always takes precedence over every other good, until presumably a certain level of welfare is reached. At that stage, the component perfectionist and other non-welfarist goods will presumably come into their own and compete for contributions to the overall good. Until that happens, the fact that these

other goods are components of the overall good is merely theoretical, because they can never win the reasoning process.

## ii) Directly valued objects and persons

Kagan groups a diffuse set of values together, attributing the source of the argument that these sorts of values stand outside an objective viewpoint to Bernard Williams. These include the value of depth of commitment to a project, such that if we give up that project to promote the greater good then something of moral value has been lost. Kagan also includes in this set of values any which the agent 'directly' values. Having this sort of direct attachment is one which we value highly, according to the moderate, and the objective viewpoint cannot deal adequately with this. Kagan challenges the notion that valuing an object or person *directly* means that an agent would be unwilling to sacrifice them. He suggests that the agent might be willing to *exchange* them. He gives two examples where exchange is supposed to show that valuing directly does not mean that an agent is not prepared to make a sacrifice:

'First, if an agent cannot save all three of his children, he might be willing to choose between saving only one or saving two-although he will obviously be greatly distressed at the need to choose at all. Second, a painter with direct attachments to several of her own works might agree to part with a directly valued painting still in her studio if this is the only way to regain a previously sold painting.....that she values even more.

What these examples suggest is that when an agent cannot retain all of the objects that he values directly, he may be willing to consider exchanges'.<sup>25</sup>

Kagan imagines that these examples show that the agent's willingness to sacrifice does not indicate that the object was not valued directly after all. He concludes that 'the extremist can plausibly suggest that an agent might be willing to sacrifice the objects

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<sup>25</sup> *ibid.* p.366



that he values directly so that *others* gain'. So the extremist can concede the importance of valuing objects directly and yet deny that the moderate needs to retain the subjective viewpoint to deal with them. Directly valued objects can take their place along with perfectionist values in the overall good and take part in the maximising battle. I am unconvinced by Kagan's argument about exchange. The point about the parent and painter is that they both have to sacrifice someone or something that they value directly in an exchange, but the result of the exchange is to benefit *them*. It is not the same as giving a directly valued object up for someone else with no benefit to oneself, which is what the extremist demands. That is precisely the point about these sorts of values.

### iii) Values of Love and Friendship

Perhaps Kagan was uneasy with his parent example when discussing directly valued objects and persons. It certainly does not seem to be the case that a parent who is willing to choose two out of three children to be saved will be prepared to make the sacrifice of one child to meet the needs of the overall good, perhaps by using that child's organs to save many other children's lives. Kagan is forced to consider direct attachments of love and friendship as candidates for subjective values which the overall good cannot adequately capture. He accurately characterises the moderate's position:

'To treat all persons equally, never bestowing any favours, never departing from the indifference implicit in the pursuit of the good - this is to love no one at all.'<sup>26</sup>

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<sup>26</sup> *ibid.* p.367

Kagan then asks whether willingness to favour is an essential part of love or friendship. His response is that it is not obvious that this is so. Kagan paints an extraordinary (to me, at least) picture of:

'an individual who shapes and carries out a life plan with an eye to promoting the good.....such a person *may well have room*, (my italics) and perhaps the need, for partners in his undertakings. But 'partnership' may be too weak a term to describe the relationships that can develop: they may be friendships; and they may be more.'<sup>27</sup>

His contention is that the moderate has not shown that love cannot be impartial. This is weak. If Kagan needs to rule out love and friendship as candidates for the subjective viewpoint, he must do better than this. Scanlon points out that people who value friendship will be primarily concerned with doing things that are involved in being a good friend. They will think that they ought to be loyal to their friends and not betray them, for example. But the reasons they have for doing this are not directed to the goal of 'promoting friendship' because friendship is a good, objective value to have in the world (although they might also think that true). They are reasons connected explicitly with the specific friendship in question.<sup>28</sup>

Of course, Kagan could point to the lives of those who are dedicated to the poor and needy; those who are apparently living out the life of the extremist. Lives such as those of Annalena Tonelli who worked alone in Somalia, not even part of a religious order or aid organisation. Such people often do not have time or the inclination for particular personal relationships. Their lives are subsumed by the project of the overall good and they are content to live directed solely by such impartiality. If some people can do it, the extremist might say, why can't it be demanded of us all? The answer from the moderate is that whilst we might admire such people and think their actions

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<sup>27</sup> *ibid.* p.368

<sup>28</sup> Scanlon (2000) pp.88-89

supererogatory, we do not think that it is desirable that we all live that way, for two reasons. Firstly, it would be to miss the chance of a fully rounded human life beyond the call of morality. (We have already seen this type of argument in the moderate's support for perfectionist and project values). Secondly and more importantly, without love and friendship some impartial aspects of morality will be missed.<sup>29</sup>

It is easy to dismiss Kagan's comments on love and friendship as not just unrealistic, but in some way unhuman, as if they have missed the very point of love. His thoughts could be developed, however, so that they do fit in with our normal conception of love and still bear a relation to the promotion of the greater good. We might draw on some thoughts from the Judaeo-Christian tradition. God is said to love us all 'equally' and the analogy with human relationships is that God loves each one of us individually, 'as his children'. We are to try to be like God, so we should try to love everyone as our brother. Would this not result in the kind of love that Kagan has in mind, and certainly in the promotion of an impartial greater good?

Nonetheless, I conclude that the moderate has the better of this argument and it could allow him to argue that there are some values which fall outside the overall good and are subjective. The moderate still has a number of problems remaining, however, if he wishes to use the partiality generated by these subjective values to justify the optional nature of supererogatory acts. Although he now has support for subjective values and thus a bulwark against always promoting the greater, impartial good, he has considerable work to do to make the justification for the optional nature of

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<sup>29</sup> For the suggestion that personal relationships help with the pursuit of the impartial side of morality see Elizabeth Ashford (2000) who suggests that 'it is only in the context of a loving personal relationship that our concern for a person is sufficiently intense to mirror the moral importance of how another person's life goes. The impartial moral point of view, again, simply holds that everyone else's life shares the same importance.' pp436-437.

supererogation work. I now turn to the problem of how the moderate can construct a reasoning process which will support options..

## **2.7 The *pro tanto* reason**

Even though Kagan thinks they cannot be justified, he claims there is nothing incoherent in the idea of moral options. He says:

'the basic structure of an option is relatively simple: there will be an option with regard to a given reaction provided that there is neither a morally decisive reason which supports that reaction nor a morally decisive reason which opposes that reason.'<sup>30</sup>

We should note straightaway that Kagan defines the structure of an option in terms of the moral reasoning process. It is true that any coherent theory of supererogation will have to be able to explain the reasoning process that surrounds the supererogatory act, but that is not all that could be behind the structure of an option. I shall be arguing in my proposal that the nature and the structure of the good is also important and might imply a different form of reasoning process from that put forward by Kagan.

Kagan thinks that the moderate agrees with the extremist that it is morally required that we do all that we can to promote (in fact to maximise) the overall good. Kagan frames this as a *pro tanto* reason; a reason that is always part of the moderate's reasoning process. The *pro tanto* reason is the embodiment of the maximising principle in reason form. However the moderate also admits the existence of options and constraints which sometimes allow the maximising principle to be modified and the *pro tanto* reason to be defeated in the process of deciding what to do. Examples

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<sup>30</sup> Kagan (1989) p.381-2.

of options might include the possibility to put one's own projects or interests (but note that these need not be *self*-interests) before the maximising principle. Examples of constraints might include the prohibition on doing harm to any one individual or indeed the balancing of the preservation of one's own life against the overall good. In other words, the moderate would allow for some sacrifices to be 'too much' to demand. Kagan explains the moderate's position by saying that an appeal to the cost to the agent of some act may be sufficient to destroy the demands of the maximising principle.

When Gianna Molla gave up her life for her unborn child that might well produce the best overall consequences, but the degree of sacrifice would have allowed her to put aside the maximising principle without failing to act rightly. The degree of sacrifice would also allow the moderate to recognise supererogatory acts as those carried out by agents who accepted the sacrifices, such as Gianna. The moderate would have to explain why some people were able to perform supererogatory acts whilst others were excused, when presumably the reasoning process was the same in both cases.

## **2.8 The countervailing considerations to the *pro tanto* reason**

In the second part of Kagan's argument, we saw that the moderate would have to produce countervailing considerations to the *pro tanto* reason to promote the overall good if he was to have a chance of generating options. Kagan's suggestion is that the only way of doing this is for the moderate to endorse a set of subjective values. This will generate the countervailing considerations, or subjective reasons, which will vie with the *pro tanto* reason. Kagan says of these reasons:

'They give the agent greater reason to promote his interests than would be yielded strictly on the basis of the objective importance of those interests. They are, in effect, additional reasons that an agent has for promoting his interests. Second, these



subjective reasons are agent-relative. Each agent has a reason to promote his interests; he does not have similar reason to promote the interests of others (i.e. others in whom he does not independently take an interest). Of course, each person does have some reason to promote the interests of others: the *pro tanto* reason to promote the good. Since that reason—an objective reason—is generated for all agents, regardless of their particular interests, it is an agent-neutral one. But the subjective reasons we are now considering give each agent further reason to promote his *own* interests (whatever they may be) as distinct from the interests of others. Thus, for any given agent and any given state of affairs, whether that agent has one of these further reasons for promoting that state of affairs will depend on the interests of that particular agent. The obtaining of specific reasons of this sort will therefore vary from individual to individual; such reasons are, in short, agent-relative.<sup>31</sup>

Returning to the Nahman example, we saw there that under Kagan's interpretation of the impartiality of the objective good, it might be part of the objective good that all parents protect their children and so Nahman might be specially chosen to be saved by his father, as one of the two who may be saved. There the maximising principle was not infringed, but Nahman's life was recognised as the special responsibility of his parents. The agent-relative reasons generated by the subjective value of parental love do something more, however. They give Nahman's parents reasons to favour him over and above other lives, so that if they are in a position where they can either save many lives or his alone, then they can save him alone. Now the maximising principle is infringed. Agent-relative reasons give agents permission to weight or to bias their interests more heavily than the structure of the overall good allows. The moderate's intention in justifying the optional nature of supererogatory acts is to find countervailing considerations to the *pro tanto* reason to promote the good. Agent-relative reasons look like a promising first step in that process.

The moderate still has work to do. He must justify the existence of agent-relative reasons and then explain why they do not always generate a requirement. Kagan claims that agent-relative reasons are justified by the moderate because without them

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<sup>31</sup> *ibid.* p.334

he would have to make big sacrifices in the face of the maximising principle. Nahman's parents might have to lose their son and save many other lives instead. That is too much for them to bear, claims the moderate, and he 'appeals to cost'.

## **2.9 Kagan's process of moral reasoning**

If we bring together four of Kagan's points:

- (i) You are required to maximise the good. Any less than the maximum is a forbidden act.
- (ii) The only good is an impartial good. Any good that stems from a form of partiality or subjective good is not allowed.
- (iii) Cost cannot justify the optional nature of the supererogatory act.
- (iv) There are no moral holidays.

then it will not be possible for the moderate to explain the process of moral reasoning behind optional acts such as those of supererogation. Kagan describes the process like this:

'An option permits the agent to pursue his interests rather than sacrifice them for the greater good. But it does not *require* him to pursue his interests; he may, if he chooses, make the sacrifice. So if the moderate is genuinely to defend an *option* it must not be the case that the promotion of the good is opposed by a morally decisive reason. Of course, it is not that there can be no reason whatsoever for the agent to pursue his interests; but if it is to suit the moderate's purposes, this reason cannot be a morally decisive one.

This, then, is the moderate's dilemma. If he claims that subjective reasons can be morally decisive, then he preserves the suggested defence of constraints, but

undermines the defence of options. Yet if he claims instead that subjective reasons cannot generally be morally decisive, then he preserves the defence of options, but abandons the suggested defence of constraints.'<sup>32</sup>

In addition to agent-neutral and agent-relative reasons, Kagan distinguishes two related types of reason; the 'patient-protecting' reason, which is a reason to do good for someone other than the agent, and the 'agent-protecting' reason which is a reason for the agent to promote his self-interests. Agent-protecting reasons are frequently used by the moderate both to establish a constraint in morality and to establish options; so, for example, Joe does not have to go into the burning building to effect a rescue because he wants to protect his own life and health, even though it is the best act available to him.

Kagan's first step is to allow the moderate to separate the lines of explanation for constraints and options so that the moderate does not have to justify both constraints and options by appeal to agent-protecting reasons. (From the above quotation we can see that Kagan thinks using this appeal for both options and constraints leads to an inconsistency. I do not discuss this point here, because Kagan is happy to conduct the attack on options even allowing for the existence of constraints).

Kagan then sets up the reasoning structure surrounding options like this. Firstly, he claims that the moderate will hold that the agent-protecting reasons will not in all cases be morally decisive. That must be right. In the case of supererogation, the agent is free to perform the act or not. If Joe goes into the burning building, he has decided that protecting his own life and health is not a decisive reason to act. So on Kagan's reasoning structure, sometimes the agent-protecting reasons are decisive, sometimes not. The reason against which they have to be weighed is the *pro tanto* reason to

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<sup>32</sup> *ibid.* p.372

promote the good.<sup>33</sup> Sometimes the agent-protecting reasons will not be morally decisive and this is because they have been outweighed by the *pro tanto* reason to promote the good. Kagan suggests that this is how the moderate would want to describe a case where promoting the good does not cost the agent very much. And that seems like a good description of many required acts. If I can save the life of the drowning child by throwing the life-belt next to me, then I surely ought to. The gap between the value of the child's life and the extra effort required by me to reach out my hand and throw the life-belt is typically too big for the moderate to consider that there are any heavily weighing agent-protecting reasons why I should not do this. (But see Chapter 5, where I discuss rescue cases).

Kagan describes a case of supererogation specifically in order to support his view that agent-protecting reasons are always outweighed by the *pro tanto* reason to promote the good. We regard it as morally meritorious, he says, if we sacrifice our agent-protecting reasons in favour of the *pro tanto* reason to promote the good. We would not do so if the agent-protecting reasons were morally decisive *against* the reason in favour of the general good. If that were so, supererogatory acts would be plain wrong. So it seems that in cases where in ordinary morality we fail to perform the supererogatory act something has gone wrong with our reasoning process, unless we can find a way of explaining how agent-protecting reasons are sometimes morally decisive without the supererogatory act being forbidden.

Kagan suggests two solutions to the moderate's problem. The first is to say that the *pro tanto* reason and agent-protecting reasons are evenly balanced so that there is no

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<sup>33</sup> Although interestingly, Kagan says this: '*in many cases*, (my italics) the only relevant opposing reason [to agent-protecting reasons] will be the *pro tanto* reason to promote the good.' p.373 This leaves open the possibility that there could at least be some cases where agent-protecting reasons are not weighed against the *pro tanto* reason, but perhaps against other agent-protecting reasons.

question of outweighing. Kagan concludes that such occurrences would be rare and thus the idea of evenly balanced reasons would not provide an account of options. He demonstrates the implausibility of evenly balanced reasons as a justification by means of a financial model:

'Suppose..that by making a certain sacrifice - say, \$500 - I could save an innocent stranger from undergoing a great deal of physical pain. And let us assume, in accordance with the moderate's suggestion, that the subjective reason which opposes my thus sacrificing my interests is of exactly the same weight as the objective reason which supports my helping the stranger. Here neither reason outweighs the other, and so there is an option. But now consider a slight variation of the case, in which the cost of helping the stranger will be \$750 rather than \$500, and the pain to the stranger will be somewhat less than in the original case. Here, presumably, the subjective reason will be somewhat stronger, and the objective reason somewhat weaker. So if the original two reasons were of exactly the same weight, in this new case the subjective reason must outweigh the objective reason. Yet here too, obviously, the moderate thinks that I have an option...'34

Kagan's suggestion that 'it seems likely that exact ties could be nothing more than extremely rare accidents' does not stand up on the basis of this example. This is partly to do with the unsatisfactory account that he has given of reasons generally. Kagan uses his maximising principle 'always promote the general good' as a reason on one side of the decision process. The principle is identical with the reason. Any reasons that appear on the other side of the weighing process must therefore defeat the principle. Since Kagan is proposing a single principle morality, there can never be a reason which defeats the maximising principle.

Further, in the case of the financial example above, the fact that the moderate will change his decision when the cost to him goes down and the benefit to the stranger goes up and that this *might* happen on the basis of very small intervals of change does not prove that ties in the weighing of reasons are rare. It might be true that there is a

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<sup>34</sup> Kagan (1989) pp.374-375



specific point on the line which represents the ratio of the cost to the agent over the benefit to the stranger at which the balance in reasons changes. There is nothing to say that the weighing of reasons should be directly fixed to one point, however. We can imagine that there is a stretch of the line where the agent sees the ratio as 'balancing' the good to the other person, such that he might either perform the supererogatory act or not. They are roughly equal. However, there will be other stretches of the line, where performance of the act is required or where the performance of the act is truly heroic.

If we are to suggest to the moderate that balancing of reasons would be rare, we might just as well suggest that the maximiser would only rarely face the prospect of two possible acts of equal value. Leaving aside my comments on Kagan's financial model, it is not clear to me how we can say that either of these two occurrences would be rare. They *seem* rare in any example with numerical values, because they are given an artificial preciseness, but this preciseness is not characteristic of most moral reasons. Indeed, we could say that the possibility of widespread and common supererogatory acts suggests the opposite - that there are many occasions when the agent has evenly balanced reasons which allow him either to perform the supererogatory act or not. Whether the agent is justified in calling those reasons even or whether he is justified in measuring them against each other are separate issues from the idea of rarity of preciseness which Kagan makes the issue here.

However, here is an argument that the moderate should consider before he appeals to the acceptability of the idea of tied reasons as a basis for solving the reason problem of supererogation. That is, if the reasons for performing an act are evenly balanced, one ought to assume that it is a matter of moral indifference as to whether one performs the act or not. But this is not the case with supererogation. It is morally more valuable to perform the supererogatory act. The Betterness characteristic tells

us this. So let us concede that Kagan is right that balanced reasons will not support the case for options, not on his argument but because we want to highlight that there is something special about the moral worth of supererogation.

Kagan's second suggestion to the moderate who wishes to establish options is that the moderate could claim that certain types of reasons are incomparable with regard to strength. Specifically, agent-protecting reasons could be compared between themselves for strength, as could reasons relating to the *pro tanto* reason for promoting the good, but the two types of reasons could never be compared. But this will not do either for the moderate, says Kagan. This is because the moderate *sometimes* appears to rely on comparing these two types of reason for determining right action:

'when enough good is at stake, and the cost to the agent sufficiently low (although not necessarily negligible), the agent is indeed required to promote the good. In such cases, the *pro tanto* reason to promote the good is morally decisive; that is, in those cases it is able to *outweigh* the relevant agent-protecting reason; so the two kinds of reason can, at least sometimes, be compared.'<sup>35</sup>

I shall be arguing that appealing to cost is not at issue in supererogation. If I am right about that, then I am free to tell a different story about reasons. It could be that the agent never weighs reasons in the way that Kagan suggests. Or, it could be that some reasons can be weighed against each other but not against other types of reason. I shall also be free to develop that line if I am able to tell a different story from Kagan about the nature and structure of the good. I must do all of this and still maintain that the agent *sometimes* grounds a requirement on the *pro tanto* reason to promote the good; a point where I am in agreement with Kagan.

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<sup>35</sup> *ibid.* p.375

What characterises Kagan's arguments is that his *pro tanto* reason is identical with his maximising principle in morality. The problem for the moderate is not strictly that it can never be outweighed (although this would be true on Kagan's view of morality nonetheless); rather it is that the moderate sometimes seems to appeal to it and sometimes not and it is hard to see how the moderate can maintain this apparently inconsistent position.

The solution for the moderate is to explain that he has more than one good that must be promoted. However, these goods are not divided into an objective and subjective set in the manner in which Kagan suggests. Sometimes reasons relating to the promotion of different goods could be incomparable. I develop these points as part of my proposal in Chapter 7.

## **2.10 Conclusion**

I conclude that Kagan's attack on supererogatory acts is not fatal. It relies on a mistaken view about what the moderate must show in order to justify supererogatory acts.

The moderate does not need to appeal to cost and to a set of subjective goods to construct an argument. I shall be arguing that the moderate can appeal to a pluralist notion of the good with many components that may be measured against each other in a number of different ways. This should give him the opportunity to explain the reasoning process behind supererogation. But first we still need to deal with the elementary point in Kagan's theory that the extremist is a maximiser and the moderate is not. On a simple intuitive basis, it is tempting to think that where a moral theory demands maximisation then there can be no supererogation and that it is the maximising principle rather than the structure of the good that stops the possibility of

supererogatory acts. I turn now to whether a maximising theory can allow for supererogation.

## Chapter 3 Does a maximising theory always rule out the supererogatory?

### 3.1 *Maximising and the Betterness Characteristic*

Must we always do our best? Supererogatory acts are sometimes thought of as the reaching the pinnacle of moral achievement. But is it right to assume that a supererogatory act means that the agent has done his best? Many theorists write about supererogation as though that were the case. I have suggested that supererogatory acts do not necessarily have to be the best that we can do. Instead, they represent an improvement in moral worth on a morally permissible alternative, as my Betterness characteristic indicates.<sup>1</sup> My view is based on simple examples which show that we consider that it is supererogatory to perform an act which is less than the best. Joe enters a burning building where there are two children to save. He only manages to save one and is still a hero, because he need not have attempted any rescue at all. This is still less than the best he might have done, which is to have saved both children.<sup>2</sup>

Whether one considers a supererogatory act to be the best an agent can do or just better than an alternative, a theory such as Kagan's which requires maximising the good poses problems for supererogation. The implication for supererogation under such a theory is that one can never perform a supererogatory act because one will

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<sup>1</sup> Many theorists discuss supererogation as though it involves performing the best that we can do, despite clear examples that intuitive supererogatory acts are not always so. Paul McNamara (1996) refers to this characterisation as the 'Optimific Thesis' and has a number of references to philosophers who endorse it as well as a providing an example to show that it is not characteristic of all supererogatory actions. McNamara suggests that viewing supererogatory acts in this way leads to a distortion of the notion of the supererogatory.

<sup>2</sup> The detail of the examples is all-important here. There is also a sense in which once the hero has embarked on his risky course of action, he is obliged to do all that he can to achieve what he has set out to do, although he was not obliged to act initially at all. If Joe was able to rescue the second child, but 'just didn't feel like it', then he is open to criticism on that point even though he was not obliged to enter the building at all.



*always* be required to do one's best. There is no act which is better than the permissible alternative, because the only permissible act is the act which maximises the good and that is required, never optional.<sup>3</sup> You must always do your best or face performing a forbidden act. However, some maximising theories could have modifications which would allow for supererogation.

For example, maximisation may not be required on the basis of every single act but over a period of time or a series of actions. Or perhaps the value of the outcome could be assessed by basing it on motives or habits. These adjustments are familiar as modifications to consequentialist theories in general and have been a traditional way of allowing for supererogation on an act-token basis.<sup>4</sup> We saw that even Kagan allowed himself to slip into something like this modified position when he talked about the extremist structuring his *life plan* in order to promote the most good. Any form of two-level assessment of moral worth which separates the judgement about a single act from a judgement about some other feature which relates to the agent may suffice to allow supererogation into the theory. This means that the agent is not required to maximise on an act by act basis, and on any occasion that he does his act may be considered supererogatory. However, in these cases we would still need to know why some agents maximise on an act by act basis and others do not. All the justificatory work that has to be done in a non-maximising theory has to be done here as well, albeit at a different level.

Another modification would be to allow some special constraints on the agent's actions (if his life were in danger, say). If the agent ignored these constraints in the pursuit of maximisation his act might be classified as supererogatory. Again,

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<sup>3</sup>Except for the formal exception of there being a 'tie' in maximal value. I discuss this below.

<sup>4</sup>Hare (1981) notably allows supererogation in this way.

arguments are required to justify where the limits are placed. Here, however, I want to consider the strongest form of maximisation in a moral theory, where to perform less than the best is wrong on an individual act basis and where there are no exceptions to the rule that one must always do one's best. I assume such a theory to be monist, like Kagan's, where there is only one good or 'master-value' which is to be maximised, albeit that the single good contains component goods.

First, I shall deal with the point that supererogation can appear in such a theory, if only on an apparently formal basis.

Suppose an agent is only able to perform one of two maximising acts. We assume that the acts tie in terms of maximising the single value that constitutes the good in the theory. He can presumably choose one to perform, and so the Optionality characteristic is met because he will be left with another permissible act (the other maximal act) as the alternative act unperformed. The supererogatory act is not actually better than the unperformed act, so it fails to meet the Betterness characteristic, but it has the same moral value, so it meets what we could term a Betterness or Equal Value characteristic. In a maximising theory, the agent does not have the possibility of ignoring both acts - he must do one of the two and there are no other alternative permissible acts. In a non-maximising theory, depending on its exact specification, the agent might have the permissible possibility of doing neither maximising act. If he does either then he has both done his best and met the Betterness characteristic because there was an alternative permissible act open to him of lesser value. To classify this type of 'tied for value' act as supererogatory in a maximising theory, is it possible to add the 'or Of Equal Value' modification to the Betterness characteristic?

The first objection to that modification is that, if it allows a maximising theory to have supererogation in that manner, then we have lost an important feature of a supererogatory act. Instead of supererogation representing special moral worth, it looks as though it comes about as a matter of luck, when two acts tie for value. It depends on there just happening to be at least two acts of maximum value available to the agent at one time and that he is not able to perform them both. I suggest that our intuition about the possibility of performing supererogatory acts is that they are often available to the agent if he chooses to do them; their availability does not depend on carefully contrived circumstances as a tie in value would suggest. There are two responses to that objection. Firstly, supererogation is dependent on circumstances anyway. It is always matter of moral luck that I find myself in circumstances where I can behave supererogatorily. Secondly, given my criticisms of Kagan on this point, perhaps 'ties for value' in a maximising theory need not be rare.

Yet making one of the tied value acts supererogatory merely because that is the one the agent chooses to perform still doesn't feel right. The unease cannot be due to the fact that the agent has not made a genuinely optional choice to perform a good act. He has. But he could presumably shake a dice to choose which act to do. What seems to be wrong with the tied value case is that for an act to be considered supererogatory we need to know that the agent had the possibility of performing a permissible alternative act of lesser worth. This gives us the gap of moral worth which makes the supererogatory act special and warrants the Betterness characteristic.

It is worth noting that, if my definition insisted on a Best rather than Betterness characteristic, then the maximising theory would be able to meet the definition in the way I described above, which would not satisfy the normal concept of supererogation. To avoid that problem, any definition of supererogation which incorporates a condition that the agent must perform the best act, must also include the possibility

that the agent has other permissible alternatives. Of course, this will then rule out the possibility of supererogation in a maximising consequentialist theory with only one good, since there are no other permissible alternatives. 'Best' in a definition of supererogation must always be qualified by the condition that there are other permissible alternatives, which gives me another reason for preferring the Betterness characteristic, apart from the straightforward intuitive consideration that there are supererogatory acts which are below the level of the best the agent could perform.

I now examine a recent account of supererogation which seeks to preserve the maximising principle whilst dealing with the problem of how to justify options in a moral theory.

### ***3.2 A proposed solution to supererogation for a maximising consequentialist***

First, I restate the two main problems which supererogation raises for moral theorists.

The first problem is the pressure of requirement. How can it be *optional* to perform a morally worthy, supererogatory act, when the alternative is a permissible but morally less valuable act? Surely it is always better to perform the morally more valuable act, to the extent that one might expect that a degree of requirement comes to bear on the agent. As we have seen the problem is particularly acute for the maximising consequentialist. Under maximising consequentialism, an agent is morally obliged to perform the action which realises the greatest moral value out of all the options that may present themselves to him. On Kagan's interpretation, this would leave no room for the supererogatory act. This is not a problem for the hard line theorist who has no concern to accommodate our intuitions about morality, but I will assume here that we

regard our intuitions about supererogatory acts as so powerful that we wish to give a good account of them in our theory.

The second problem is the problem of rationality and moral reasoning, as Kagan's work has demonstrated.<sup>5</sup> When an agent makes a decision to act, a simple view of the procedure is that he considers a number of reasons, and having sorted and weighed the reasons, he acts according to the balance of reasons. Commonly, the balance of reasons favours one particular act. But the agent may find himself facing a tie, in which case, he presumably has an option as to which act to perform.<sup>6</sup> As we have seen, the possibility of a tie does not necessarily help the theorist with an account of supererogation, however. One characteristic of a supererogatory act is that it is morally superior to other acts available to the agent. So it is not a matter of moral indifference as to whether the agent performs the supererogatory act or not. In a moral sense, it is better that he does.<sup>7</sup> The structure of moral reasoning must therefore support the Betterness characteristic without generating a moral requirement. But the moral reasoning must also support the Optionality characteristic; the possibility that an agent need not perform the supererogatory act but can do so if he wishes. At the same time, neither the supererogatory act nor the permissible alternative should be forced to be classified as irrational.

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<sup>5</sup> This worry is not confined to the maximising consequentialist. It concerns everyone who tries to give an account of moral reasoning and supererogation in their theory. See Raz (1975), Dancy (1993). There is a way of avoiding the problem completely which Portmore suggests. I discuss his suggestion later.

<sup>6</sup> Or he faces a dilemma, which might take a number of shapes but commonly the balance of reasons favours performing two acts which cannot both be performed.

<sup>7</sup> Notice that my account of supererogation doesn't require that the supererogatory act is always the best act that one can perform - it only has to be better than an alternative morally permissible act. Suppose we have an opportunity to perform two different acts both of which are supererogatory, although one has much greater moral value than the other. Even if we perform the less morally valuable supererogatory act, it is still better than the alternative which is at worst bare moral permissibility.



Douglas Portmore thinks that he can solve both these problems.<sup>8</sup> Indeed, he makes the strong claim that his is the *only* account of options and supererogation available to a theorist who subscribes to a form of maximising consequentialism. He gives an account of supererogation within the context of a maximising consequentialist theory, albeit that the theory is a special type of consequentialism which incorporates the notion of evaluator relativity, a form of agent relativity. He finds that within this theory, and by using a series of claims from ordinary morality, he is also able to deal with the problems of both maximisation and moral reasons.

Briefly, his solution is to explain the generating of a moral option as follows: an agent may perform the act which he has most *moral* reason to do or he may perform that act which he has '*all things considered*' reason to do. Both acts are morally permissible. If the agent performs the act which he has most moral reason to do when the balance is in favour of the '*all things considered*' reason, then the act is supererogatory, but irrational, as it ignores the demands of the overriding '*all things considered*' reason. If he performs the act which is supported by an overriding '*all things considered*' reason, he has acted rationally and within the bounds of moral permissibility, but not supererogatorily.

I will sketch out Portmore's solution in more detail, then argue that it is ultimately unsuccessful and finally compare it with Kagan's approach.

### **3.3 Position Relative Consequentialism**

Portmore's account relies on a form of consequentialism which he calls '*position relative*'. In this theory, the traditional consequentialist principle '*act always so as to*

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<sup>8</sup> Portmore (2003). Portmore does not formulate the two problems as explicitly as I have done.

maximize value' is conjoined with the idea that the value of certain states of affairs is taken to vary depending on the position of the evaluator or agent, or 'evaluator relativism' as Portmore terms it.<sup>9</sup> He says:

'the resulting theory holds that agents ought always to bring about what is, from their own individual position, the best available state of affairs'.<sup>10</sup>

Position Relative consequentialism stands in contrast to a more traditional form of consequentialism, such as classical utilitarianism which is evaluator-neutral with respect to the nature of the good. (Note in particular the contrast with Kagan's 'overall good' which generates agent-neutral reasons. Portmore's Position Relative consequentialism is agent-relative on Kagan's interpretation of the term.) The distinction between evaluator-neutral and evaluator-relative theories becomes important when we consider that a characteristic of all consequentialist theories is that the good is defined prior to the right.

I want to investigate whether shifting the viewpoint of the good from the impartial spectator to the necessary partial agent will do anything to help account for supererogation. Intuitively, it looks promising. Traditional examples of the supererogatory act are often characterised by the agent ignoring his own interests and sacrificing them to the general good. Joe is not concerned with his own life and limb when he effects a rescue of children in a burning building, for example. Perhaps Portmore's introduction of partiality will give us something like agent-relative reasons and values from which we can generate an account of supererogation. But there are problems.

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<sup>9</sup> Portmore acknowledges his debt to Amartya Sen for this idea

<sup>10</sup> Portmore (2003) p.304

The first worry is that Position Relative consequentialism's deviation from traditional consequentialism in the shape of evaluator relativity is not enough in itself to generate options. Portmore gives an example which I shall develop and refer to throughout as the Weekend Example. In this example, Portmore points out that the unvarnished Position Relative consequentialist account of a choice of actions works like this: if I am faced with the choice of spending the weekend finishing a philosophy article or volunteering for charity, then if the balance of reasons from an evaluator relative viewpoint favours finishing the article, that is what I am required to do. Volunteering for charity is just plain wrong. (Kagan has already introduced us to this problem, which is that if reasons stemming from a subjective set of goods outweigh the reasons stemming from the overall good, then they generate a requirement, not an option.)

In the case of the Weekend Example, if the reasons in favour of finishing the article are decisive, then we are forced to say that volunteering for charity is the wrong thing to do. This looks like a counter-intuitive result for two reasons.

Firstly, we might think that an appeal to personal projects can never 'trump' a benevolent act. My interpretation of Kagan's view was that in a non-ideal world, with so much world poverty, personal projects would always be ranked lower than acts which helped others. Kagan allowed that personal projects could be part of the overall good, but they would not normally win the maximising battle and almost certainly not in the case of Portmore's Weekend Example. A variation of this view would be to say that the values involved in finishing the philosophy article are not *moral* values at all, but pure self-interest. The values involved in volunteering for charity are moral values, however, because they concern the welfare of others, in particular others who are in need. On this view, it would never be wrong to do an act with moral worth instead of an act with none.

Secondly, we might think that the result looks wrong because we think that it should be optional whether we volunteer for charity or write the article. We think that there is something to be said both for finishing the article and volunteering for charity and so to classify the act which was not performed as morally wrong would not be correct. It is of course this view that Portmore supports, or at least wants to show that he can fit into his adapted consequentialist theory, because it the view which allows for supererogation.

Portmore's next step is to appeal to a series of claims which he suggests are held by supporters of ordinary morality. Through these claims, acting as premises, he hopes to be able to show that there is an argument for concluding that there are moral options and thus supererogatory acts. He will then attempt to factor this argument into his version of consequentialism.

### ***3.4 Establishing options***

Before discussing these claims, I want to examine Portmore's interpretation of the conclusion that there are options in morality. He suggests that the nature of a moral option means that an agent may give his own interests particular weight when considering his actions. This consideration can produce either agent-favouring options or agent-sacrificing options. That is, he may choose to give his own interests greater weight when assessing the value of the overall state of affairs that will result from his act (an agent-favouring option) or he may choose to sacrifice his interests in part or entirely when making the same judgement (an agent-sacrificing option). This is an example of the self-other asymmetry that exists in ordinary morality and is precisely the sort of bias that Kagan does not allow in his theory.

This outline of how to generate options certainly looks promising as an account of supererogation, provided that:

(i) we are clear about what is meant by the agent's interests,

and

(ii) all types of supererogatory acts will fall under this type of characterisation where the agent sacrifices his own interests

and

(iii) we can provide an adequate explanation of why this sort of option is available to only the agent, thus answering Kagan's criticism of the bias.

Taking this last point first, there is an obvious link between this explanation and the justification of Position Relative consequentialism. An argument against agent-sacrificing/favouring options and against Portmore's modified consequentialism is that there is no reason for privileging the agent in this way. We have seen that Kagan does not believe there are any arguments for agent-favouring options.<sup>11</sup> Given that Portmore's account relies so heavily on it, I think that he should at least mention the way in which support will be generated.<sup>12</sup>

As far as the first point is concerned, we saw that Kagan allowed a great deal to count as the agent's interests, both self-interest and the interest that the agent had for others, which for Kagan were subsumed in the overall good. Portmore restricts the agent's interests purely to self-interest here.

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<sup>11</sup> Or indeed for agent-sacrificing options, where the sacrifice is not demanded by the promotion of the impartial good.

<sup>12</sup> He might for example appeal to an argument which suggests that there is such a thing as 'separateness of persons' and that this will be enough to render the self-other asymmetry which he relies on acceptable. Although this position might be thought not to have good consequentialist credentials, Sidgwick believed this to be the case, according to Derek Parfit (1984).



As for the second point, it is true that a supererogatory act is frequently characterised by an agent sacrificing his interests in favour of the good of others, interests which he is perfectly justified in protecting or indeed favouring. However, I suggest that it might not be true of all supererogatory acts, depending on how we wish to define a supererogatory act. I return to this point later as an objection to Portmore's account.

### **3.5 The claims of ordinary morality**

Here are the claims from ordinary morality which Portmore sets out as the premises in his argument:

**'Claim 1:** The mere fact that performing an act would be in the agent's self-interest does not constitute a *moral* [my italics] reason for her doing so. The reason an agent has to further her own self-interest is a non-moral reason.

**Claim 2:** Moral reasons do not have supreme rational authority: non-moral reasons can and do sometimes override moral reasons. Thus non-moral reasons can be decisive in determining what it is all things considered rational to do even when they conflict with what the balance of moral reason supports doing.

**Claim 3:** It is always morally permissible to do what the balance of all reasons, moral and non-moral, supports doing. That is, it is always morally permissible to do what one has most reason to do, all things considered.

**Claim 4:** It is always morally permissible to do what the balance of moral reasons supports doing. That is, it is always morally permissible to do what one has most moral reason to do.

**Claim 5:** Therefore, an agent has the moral option of pursuing either what's best in terms of her own self-interest or what's best in terms of the interests of others whenever both (a) she has a decisive non-moral reason to do what's best in terms of her own self-interest and (b) the balance of moral reasons supports doing what's best in terms of the interests of others.<sup>13</sup>

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<sup>13</sup> Portmore (2003) p.308

Portmore's suggestion is that ordinary morality is committed to claim 5. Claim 5 can only be arrived at by accepting claims 1-4 and Portmore then attempts to show that ordinary morality is also committed to these claims. Before examining this in detail, we can see immediately how he arrives at his conclusion. By allowing non-moral reasons to trump moral reasons on some occasions, Portmore has immediately found a place for supererogatory acts in a way which Kagan could not. In Kagan's view, morality is all pervasive, but Portmore has allowed a limit to morality by conceding that there can be non-moral reasons which are related to non-moral values. Will this be enough to give an account of the type of option that supererogation requires, and is it a position that can be justified?

### ***3.6 Reasons to pursue one's self-interest - is Claim 1 right?***

Portmore develops Claim 1 - the idea that when an agent has a reason to pursue his self-interest this is not necessarily a moral reason. He concedes that there may be times when the agent so acting does generate a moral reason. Nonetheless, his view is that when an agent acts in his own self interest he is acting rationally to achieve an end that accords with a preference, but he is not necessarily acting morally. Let us flag up the occasions when an agent might be considered to be acting morally when he acts in his own interest with which Portmore does not deal in detail. It looks as though there can be two cases where this is likely to be so:

i) when I have duties to myself;

ii) when the reasons that support my acting in my self-interest are to be weighed in a reasoning process that will help me decide whether or not to perform an act of moral worth.

Portmore says a little about the first point. To those who think that duties to oneself are a counterexample to Claim 1, he suggest that the sorts of duties to oneself that are typically cited are not derivative of a moral duty to one's own interest but relate instead to perfectionist goods, which for Portmore's purposes stand outside the moral realm. For example, he would presumably consider that I do not have a duty to myself to develop my talent for picking up pencils with my toes, but I arguably do have a duty to myself to pursue my cooking skills. Good food might rank as a perfectionist good, but picking up pencils with my toes will not (unless the small amusement value to others counts). He goes on to suggest that duties to oneself give out in that 'people may permissibly neglect ...those [talents] that have no potential for benefiting anyone besides their possessor'.<sup>14</sup> Portmore's suggestion is that duties to oneself in fact bear no relation to self-interest, but instead return right to the heart of morality as being 'other-centred'; we do not count as duties to oneself those which would not have a use for others.

What of duties of self-care and self-respect, which are made much of in certain moralities and specifically religious faiths or the ideal of Kantian moral perfection? These are not related to the welfare or benefit of others, but are directed at the simple idea of giving oneself the value that is due as a person.<sup>15</sup> Portmore's rejection of duties to oneself would leave out the possibility of certain supererogatory acts which involve the extension of this duty, such as the example of Evelyn Glennie, the deaf percussionist who has developed her talents to a very high standard.

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<sup>14</sup> *ibid.* p.314

<sup>15</sup> Kagan (1989) is forced to consider the possibility of duties to oneself. pp 212-215. He does not reject it outright. This is because self-interest constitutes part of morality for Kagan. It is part of the overall good. They do not offer the possibilities of options in his theory, though. If reasons stemming from duties to oneself triumph in the battle of moral reasons, then they are required. If they lose, they are not duties on that occasion, but are forbidden.

I suggest that there is a second case where an agent might be considered to be acting morally when acting in his own self interest which is not explicitly considered by Portmore. Indeed, his whole argument assumes that these cases do not exist. In his argument for his version of consequentialism, Portmore gives us the Weekend Example, where the agent considers that he has reasons to write his article rather than to volunteer for charity. The reasons to write the article appear as reasons in the agent's own interest and thus according to Portmore are not moral reasons. They cannot be, because he is going to use that fact to be able to generate an option between writing the article and volunteering for charity. But what precisely are the set of reasons under consideration?

The reasoning might go on the one hand like this: I must write my article this weekend because it is very important to my career - this certainly looks like a clear case of a non-moral reason related to the agent's self-interest. Or on the other hand: I know I ought to write my article this weekend but I have a chance to work for charity and other people's lives are more important than my career. We must at least consider it possible that what Portmore takes to be a non-moral reason might be part of a weighing process prior to a decision about a moral act, whereby the reason acts primarily as an *excuse* or *justification* not to perform that moral act and only secondarily as a reason in one's own interest. When such reasons are part of this decision process, I suggest that they do not escape some moral flavouring. In ordinary morality, we check that these non-moral reasons do not infringe a moral constraint, so that they are at the very least morally 'vetted'.<sup>16</sup>

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<sup>16</sup> Scanlon's contractualism has to deal with the same point. There, non-moral reasons can sometimes ground a reasonable rejection of a principle, making it morally wrong to act in a certain way. The term 'reasonable' does quite a bit of work in Scanlon's theory. It would not be reasonable to pursue my project of planning a bank robbery in lieu of working for charity, however committed I was to the project. Some antecedent moral vetting of the non-moral reason takes place before it can

It is critical to Portmore's account that self-interest counts as a non-moral value, and yet he concedes that sometimes it might be moral. However, Portmore does not tell us how we are to distinguish between occasions when self-interest is to be considered moral and when not.<sup>17</sup>

### **3.7 The other claims in ordinary morality**

Claim 2 is that moral reasons do not have supreme rational authority. Non-moral reasons may override moral reasons in deciding what it is rational to do. We would normally expect a rider here to say that non-moral reasons can override moral reasons *provided they do not infringe any moral constraints*. Otherwise Claim 2 could allow us act rationally, but immorally. Kagan makes the point that the justification of constraints and options are linked, and here is an example of this happening. We can only put a limit on morality and thus generate options provided we put a constraint on when the limit applies. So non-moral reasons can trump moral reasons, but only provided they do not infringe a constraint. Hence Portmore's Claim 3.

Claim 4, that it is always morally permissible to do what one has moral reason to do is self-evident.

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be put in contention with a moral reason. See Ridge (2001) p.476. Portmore needs something like the 'reasonableness' filter.

<sup>17</sup> Establishing a distinction between at least two types of reason or value is a popular way of accounting for options and supererogation in particular. Rawls (1971) suggests that this is how he would account for supererogation. Where the circumstances of justice do not apply and there is extreme scarcity of primary goods, then Rawls' principles of justice are not applicable but acts of goodness are still recognised and would be in certain conditions supererogatory. Similarly, Rawls suggests that there are areas of goodness which cannot be reached by the principles of justice, again giving scope for supererogatory acts.



These four premises are presumed to be jointly necessary and sufficient to produce the conclusion that embraces options, stated by Portmore as:

'an agent has the moral option of pursuing either what's best in terms of her own self-interest or what's best in terms of the interests of others whenever both (a) she has a decisive non-moral reason to do what's best in terms of her own self-interest and (b) the balance of moral reasons supports her doing what's best in terms of others'.<sup>18</sup>

There is no difficulty in agreeing that Portmore's argument goes through, provided we are happy with:

(i) the distinction he draws between moral and non-moral reasons. One suspicion is that Portmore has made the job of accounting for options easy for himself by merely stipulating rather than arguing for such a categorisation of reasons;

(ii) the suggestion that Position Relative consequentialism can deal with this account of reasons;

(iii) Portmore's concept of a moral requirement; always act as to maximise value. Given his project, I think that we must accept this point.

Taking (ii) first; Portmore tells us that evaluator relativity only allows us to estimate value from one position, namely ours, the agent's. We are not allowed to switch back and forth between evaluator relativity and evaluator neutrality (which gives us the traditional viewpoint of the consequentialist; the impartial spectator). But his account of moral reasons looks as though his adjusted version of consequentialism does just that; the agent either sees the circumstances surrounding him through the evaluator relative perspective, which in a normal case of supererogation might provide the 'all

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<sup>18</sup> Portmore (2003) p.308

things considered reasons' not to perform the act, or the agent sees the circumstances through the evaluator neutral viewpoint, choosing to sacrifice his own self-interest, and he therefore performs the supererogatory act.

There is a more pressing worry concerning (i). What does Portmore say about this split of reasons into the moral and the non-moral? He tells us that a moral reason is nothing more than one which generates a moral requirement, *in the absence of countervailing reasons*. Given that Portmore's definition of a moral requirement must be something like 'act always so as to maximise value' we need to know more about what he counts as 'value' in the moral case. Then we will know more about the nature of a moral reason. Since Portmore tells us little about what a non-moral reason is, we must presume that it is a simple reason for acting which does not aim at any of the moral values. (Otherwise it would then turn into a moral reason).

### **3.8 Problems with Portmore's account of reasons**

Portmore makes a distinction between two types of reason which will allow us to generate moral options. He ought, therefore, to say something about either the connection that these reasons have to how a moral requirement is generated or how the reasons are connected with the values they bring into play. A deontologist might be able to deal with it purely through the realm of right action, but because a consequentialist is committed to the good being prior to the right it looks as though the real key to giving an account of options within consequentialism cannot lie purely in the realm of right action but must also say something substantial about its theory of the good.

So, if it is morally permissible to act on the balance of either moral or non-moral reasons, but it is *morally* required by the theory that we maximise value, it seems that

we have two types of value (at least) in play, that promoted by moral reasons and that promoted by non-moral reasons. This means that the Portmore consequentialist is sometimes maximising non-moral value and sometimes maximising moral value. There might be no problem with this, except that it does seem to need a special theory of the good to support it. For example, what sort of non-moral values can be maximised at the expense of moral values?<sup>19</sup>

Portmore says little about this. He claims that we should conceive of consequentialism:

'in such a way that it tells us both what one has most moral reason to do and what one has most all-things-considered reason to do.....I suggest...that we take consequentialism to be the view according to which all reasons for action derive from the value of the states of affairs that the acts produce'.<sup>20</sup>

Portmore has no choice but to make his consequentialism cover *all* reasons for actions. Otherwise it will not be possible to compare all-things-considered reasons, which include moral and other types of reason, with purely moral reasons and to come to a decision about right and permissible actions. Of course, this is not a worry in itself and there is a sense in which every moral theory, and specifically traditional consequentialism, does this anyway. But there is a slight difference. The traditional form of consequentialism scans all reasons for actions and sorts them into moral and non-moral categories, according to whether they bear on the value or values which

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<sup>19</sup> Portmore's separation of reasons into the moral and the non-moral is reminiscent of Susan Wolf's approach to supererogation. (Wolf 1982). She separates goods into moral and perfectionist goods. Her agent is allowed (in fact, positively encouraged!) to pursue perfectionist goods, yet of course he is also permitted to venture into the moral domain. Being more active in the moral domain than average will lead to supererogation, although on Wolf's view this is not necessarily a desirable course of action. She recognises the problem I raise here in connection with Portmore. When is the agent required to enter the moral domain and when is it optional to do so? Wolf tells us we are looking for a metamoral theory here, one which rises above morality and the pursuit of individual perfection, and tells us when we should be in which sphere. Wolf herself is pessimistic about the possibility of such a theory. Her suggestion is that it is impossible to escape something that looks like a moral theory.

<sup>20</sup> Portmore (2003) p.320

the theory demands be maximised. (For example, utility, preference satisfaction, welfare and so on). But what are the values that Portmore's theory wants to maximise? All he has told us about the nature of the good is that:

- (i) value must be maximised
- (ii) there can be moral and non-moral value.
- (iii) value can, and must, be assessed from the agent's viewpoint.

He has not told us how to distinguish between the moral and non-moral reasons which relate to those values.

There is however a clue to a *disvalue* in Portmore's theory. Portmore says that

'there is..... tremendous agent-relative (moral) disvalue in doing harm oneself, which outweighs even the agent-neutral (moral) disvalue in failing to prevent harm.'<sup>21</sup>

This allows Portmore to set up a constraint to deal with 'abhorrent' utilitarian examples such as throwing a third unthreatened child on to flames which are threatening to engulf two other children, thus maximising lives saved. Portmore thinks it is important to incorporate a harm constraint because, if the theory does not insist on this type of constraint, the options that his theory could generate might be wide enough to allow an agent to commit harm in the pursuit of personal projects or, in Portmore's more general terminology, maximising non-moral value. This echoes Kagan's point that any theory which wants options must also put in place constraints; otherwise the options will lead to abhorrent acts.

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<sup>21</sup>ibid. p.325

Given that Portmore has chosen to be specific in the case of disvalue, we might have expected more clarity in the case of value. We can take it that benevolent acts count toward promoting moral value and that acts which favour our personal projects count toward non-moral value. But what about acts which benefit our nearest and dearest as opposed to strangers?

It would seem plausible that under Position Relative consequentialism all acts which benefit our family and friends, and certainly any obligations we have to them, carry much more moral value than acts for strangers, precisely because they are to be evaluated from an agent-relative stance. Of course, that might depend on the agent's personal relationships and temperament. If he happens to be the type of person who naturally cares more about the plight of strangers than that of his own family, then presumably more moral value is attached to the acts which relieve the needs of strangers. Under Position Relative consequentialism, values appear to be fixed by the agent's preferences, but disvalue is taken to be a moral absolute in the sense that it is presumed that all agents will consider committing harm a 'tremendous disvalue'. Portmore remains silent on the disvalue that results from an agents' failing to aid.

### ***3.9 Portmore's Characterisation of the Supererogatory Act***

Now I want to turn to Portmore's detailed treatment of supererogatory acts. I agree with him that two essential features of a supererogatory act are (i) it must be morally optional in the sense of being neither obligatory nor forbidden and (ii) it must be in some sense morally better to some other act that the agent may permissibly do instead. These features are my Optionality and Betterness characteristics respectively.

However, later in his discussion on supererogation Portmore adds a third feature which he takes to be central to the definition of a supererogatory act. He says 'an act



is supererogatory only if the costs in performing it are greater than costs in performing some other permissible alternative.'<sup>22</sup> So cost is a necessary condition for supererogation in Portmore.

Unlike the first two features, this does not, I believe, accord with pretheoretic intuitions about supererogation. I might have to choose between spending the afternoon mending my neighbour's fence or in concentrated revision for a particularly difficult examination. It is much more 'costly' in the sense of its being a burden for me to revise. Nonetheless, our intuitions are that helping my neighbour is supererogatory. That is because of the value that it promotes, benevolence, over the value of the alternative, which in this case is the furtherance of my self-interests in the shape of my career plans. So in some cases at least what makes an act supererogatory is *the type of value* I choose to promote, rather than the cost to me. Portmore might start by suggesting that even here I have sacrificed my own interests in not revising for the exam. But if in fact I find it more congenial to mend my neighbour's fence, then I appear to have sacrificed very little. Then Portmore will claim that, because my preference is to mend my neighbour's fence and there is no cost involved, the mending of the fence becomes obligatory. This does not seem to meet our intuition that there are small favours we can do which do not cost us very much and yet are still regarded as supererogatory.

Portmore combines his view about cost being central to supererogation with the source of his agent-centred options, namely the claim that in ordinary morality reasons to promote my self-interest are non-moral reasons. In the case of the Weekend example, if I have a preference for spending the weekend in voluntary work for charity rather than working on my article, then my non-moral reasons (my preference

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<sup>22</sup>ibid. p.331

for a particular action) and my moral reasons (the assumption that working for charity is a moral reason because it presupposes benevolence) combine to give me an 'all things considered' reason to work for charity, as well as the balance of moral reasons giving me the same result. This agent preference has two important consequences for Portmore's account.

Firstly, working for charity becomes rational, since it is the result of my doing what I have reason to do 'all things considered'. Secondly, because the moral and non-moral reasons give the same result, the act also becomes obligatory, not supererogatory. So just changing my preferences changes the deontic state of an act from morally permissible to morally obligatory.<sup>23</sup> I suggest that this conflicts with our intuitions about supererogation.

Imagine someone who is always doing good for others and enjoys it: the contented altruist. Are his actions to be denied the status of supererogatory merely because he happens to enjoy helping others? Does the military hero, whose life is meaningless without the army and who enjoys every minute of putting his training into battle practice, lose his status as hero because he thinks that his courageous acts are merely his duty? Portmore's view does, however, fit with the phenomenology, in that agents often claim to have been 'doing their duty' or 'doing no more than anyone else would have done' after the event; nevertheless, this rarely stops others from acclaiming them as saints and heroes and certainly does not lead the protagonists to demand that others do the same, which would be the case if they were merely complying with a moral requirement.

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<sup>23</sup> To further Portmore's case, recall Urmson (1958), who claimed that acts carried out by a 'mother's natural affection' do not count as supererogatory, because, I conjectured, her desire to do the act nullified the costs, however great, and so the act could not be supererogatory on Urmson's view.

We can certainly imagine cases where the agent may very much desire to perform the act but the costs as perceived by the observer are still very high. Gianna's sacrifice of her life for her child is a good example. People do willingly and gladly risk their lives for their loved ones (and more rarely strangers), yet we still consider such acts as supererogatory (perhaps *especially so* if they act willingly).

So if an agent wants to perform an act which would otherwise be considered supererogatory, then the cost of that act disappears, according to Portmore and the act fails to meet his necessary condition for supererogation, namely costing more than another permissible act. It ceases to be optional and irrational, and becomes required and rational.

I do not agree that because cost disappears through the agent's preference then the act ceases to be supererogatory. However, I think that Portmore has highlighted an important point. Certain acts of supererogation appear to be required from the agent's point of view, and this may often be the case when the agent has a desire or preference to perform that act. The requirement is not such that the agent considers that it is required of everyone though. I also believe such an act would still remain supererogatory from the third-party viewpoint. Further, even though the onlooker regards such an act as supererogatory, he does not regard it as irrational. I develop this point in my proposal in Chapter 7.

Earlier, I discussed the implicit assumption by Portmore that all supererogatory acts are the result of the agent failing to favour his interests and in fact necessarily choosing to sacrifice them (which is why his account of supererogation comes out as always irrational). On Portmore's account, a supererogatory act happens when an agent chooses to perform the act with maximal moral value but not 'all things considered' value. If the two types of reason 'tie', then the act is no longer

supererogatory but obligatory. This is how the idea that, if an agent wants to perform a supererogatory act, then it becomes obligatory works - the agent doesn't have anything to sacrifice, because it is cancelled out by his preference to perform the act and so the two types of reason either tie or the moral reasons triumph. As we have seen, I disagree with this analysis of a supererogatory act both because I do not think that cost need be a necessary feature of all supererogatory acts and because I do not think it agrees with our intuitions about supererogatory acts. Even if agents really want to perform such acts which are not in their interest we still think of them as supererogatory and rational.

### ***3.10 Criticisms of Portmore's account***

I discuss Portmore's account of supererogation with specific reference to the categories of supererogatory act discussed in Chapter 1. I categorised supererogatory acts as follows:

#### **(i) Heroic and saintly acts.**

These are acts with a highly valuable outcome and where a substantial sacrifice is required by the agent - the typical heroic and saintly examples of supererogatory acts. There is seldom any consideration as to whether we 'ought' to perform these or not. They are strictly optional. Portmore's account can deal with these easily. An agent looks as though he may choose either to favour or sacrifice his interests on these occasions. If he sacrifices his interests (and the costs to him are huge) we will call his act supererogatory. So Joe's rescue is supererogatory. We can agree with Portmore that he has an 'all-things-considered reason' not to perform that act, and a moral reason to do so. Perhaps, in cases of heroism, we are happy to go along with the Portmore account and describe Joe's act as 'irrational', because we can see that he has

acted so substantially against his own interests in the performance of the act (the cost being so great with regard to something basic and central to the agent such as his health or life or a substantial part of his wealth or life plan).

However, taking Portmore's points about agent preference into consideration, so that the agent actually wants to perform this act, it is hard to see how such heroic acts can become obligatory, unless they are only obligatory for that particular agent under Position Relative consequentialism. If that is the case, this inability to universalise the moral requirement would seem to seriously undermine the efficacy of the moral theory. My proposal also makes use of the dual deontic aspect, whereby the agent thinks that a supererogatory act is required, but the act is optional for others; thus I face the same problem. I discuss this in Chapter 7.

#### (ii) Contrasting value cases of supererogation

I refer to supererogatory acts such as those which might arise from Portmore's Weekend Example as 'contrasting value' cases of supererogation. This represents an addition to my classification of supererogatory acts in Chapter 1.

In contrasting value cases of supererogation, the agent can seriously consider which of two lines of action he could take. One description of this type of act relies on cost: the supererogatory act does not involve him in being a hero, but it involves a *degree* of sacrifice. Another description says that this sort of example is about a contrast and comparison between different types of value.

I prefer the latter description; although Portmore talks about cost, it seems that he too sees it as an example of contrasting value. In his case, the distinction is between moral and non-moral value. My concern with Portmore's account in these cases is that



we do not know enough about his distinction between moral and non-moral values to make the account work. His claim that there is enormous disvalue to the agent in causing harm suggests that he must take on the debate about harming and aiding, which significantly changes the structure of this type of example. Instead of its being an example which centres round the agent's ability to sacrifice or favour his interests, it becomes an example which asks how much harm the agent is prepared to do. To deal with these cases of possible supererogation, Portmore would have to tell us more about the values in his theory and those which count as moral values and those which do not.

### (iii) Favours

Finally, Portmore does not seem to be able to account for small beneficent acts which are often seen as acts of supererogation. Small acts of kindness or forgiveness may cost the agent very little, and it is hard to see how an account of supererogation which relies entirely on cost can explain these. Perhaps Portmore can account for them by suggesting that if I do a favour which costs me very little, instead of permissibly doing something which costs me nothing at all, then just that very small difference will satisfy the necessary condition of cost for supererogation. But in that case one of Kagan's criticism of the appeal to cost comes to mind. If the cost is very small indeed, what sort of notion of cost is being appealed to? Perhaps an infringement of moral autonomy, which Kagan took to be an empty notion, and I agreed with him.

### ***3.11 The contrast between Portmore and Kagan***

In contrasting Portmore with Kagan, I draw the following conclusions.

Portmore's account shows that maximisation is not in itself a bar to supererogation, but there must be more than one good in the theory which can be maximised.

In Kagan's case, the overall good is comprehensive; there are no other goods which stand outside it, not even the agent's self-interest. Therefore, maximising the overall good in his theory is always required and, because there is only one good, maximising can never lead to the possibility of options such as supererogatory acts. Kagan's attack on supererogation is two-fold. Firstly, he attempts to argue for an all-inclusive overall good, so that there is no competing good which can form the source of reasons to compete with the *pro tanto* reason to maximise the good. In this attempt, he seeks to show that the moderate cannot justify separating out perfectionist and other types of good from the overall good. I rejected his claim at least as far as certain values connected to love, friendship and therefore partiality were concerned. Secondly, Kagan suggests that there is no adequate justification for limiting promotion of the overall good to less than the maximum. He rules out cost in this regard. Therefore, maximisation is the effective bar to supererogation in his theory. I shall be arguing against Kagan both in respect of his attempt to establish a single good in morality and in respect of his suggestion that cost is the only justification for limiting the promotion of a moral good.

Portmore, on the other hand, allows two sets of values to be maximised; those generated by moral reasons and those generated by 'all things considered' reasons, which are composed of the moral reasons and the non-moral reasons connected to the agent's self-interest. Maximising 'all things considered' reasons leads to required and rational acts. Maximising moral reasons may, in the face of countervailing 'all things considered' reasons, lead to supererogatory acts, but they are always irrational since they ignore the 'all things considered' reasons. The determinant factor here is the cost of the act. On Portmore's account, a supererogatory act is one which always costs an

agent more than another morally permissible act. If the costs of this act disappear because the agent wants to perform the act, then it becomes an act determined by the 'all things considered' reasons and is required and rational.

Portmore's account differs from Kagan's firstly in that it allows for more than one good to be maximised. Secondly, it allows cost to be a justification, indeed a necessary condition, of a supererogatory act. But note that Portmore does not need cost to provide a limit to maximisation, as it is assumed to be used by the moderate on Kagan's account. Portmore needs the cost factor to allow his agent the option of pursuing and indeed maximising the 'all things considered' reasons. Although cost is not used by Portmore in quite the way Kagan envisages that the moderate is forced to use it, Portmore is nonetheless forced to use some kind of agent subjectivity to deploy the notion of cost successfully to generate options. The subjectivity takes the form of his Position Relative consequentialism, which allows the agent to contrast the 'all things considered' reasons, in which the agent's self-interest plays an important part, with the moral reasons, which are presumably not dependent on purely the agent's viewpoint.

Cost and subjectivity therefore play important roles in Portmore's account, just as Kagan suggested they would have to in any account of supererogation. The suggestion with which I began this chapter, namely that maximisation is the complete bar to supererogation, turns out not to be true, although it is only so when more than one good is available to be maximised.

I have suggested that the two key problems in supererogation are to understand why such acts are not required and to understand how they can be rational. When on Portmore's account cost disappeared, acts which might otherwise have been considered supererogatory became required and rational, suggesting that cost is

indeed a major factor in supererogation. I now turn to the issue of cost and supererogation.

## ***Chapter 4 Is Cost a justification for the optional nature of supererogation?***

### ***4.1 The attraction of the appeal to Cost***

The Victoria Cross was 'born in the carnage of the Crimean War'.<sup>1</sup> The reasons for awarding the medal stemmed partly from the fact that this was the first war to be covered by journalists, who were able to report the appalling conditions of war. Cholera and typhoid killed 20,000 as opposed to the 3,400 killed in battle. But the journalists were also able to report graphically the courage and endurance of the soldier in the face of these terrible conditions and the horrors of battle. Pressure rose for some kind of award to be made to those soldiers who faced the horrors and distinguished themselves.

Just before the Victoria Cross made its appearance, an attempt had been made to distinguish particularly brave acts by non-commissioned officers and privates by instituting the Distinguished Conduct Medal. (Commissioned officers had their own decoration, the Order of the Bath). Before that the common soldier could have expected a campaign medal, but 'this would be issued to every man who took part in the war, whether he had fought bravely or not'.<sup>2</sup> However, it was decided that there was a need for a decoration that was open to all ranks and which reflected extreme bravery shown in the face of the enemy in the front line. There were many such encounters in the Crimean War.

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<sup>1</sup> Details of the Crimean War from a website on the history of the Victoria Cross run by Iain Stewart: [www.victoriacross.org.uk/aahistor.htm](http://www.victoriacross.org.uk/aahistor.htm)

<sup>2</sup> *ibid.*



Sergeant Henry Ramage galloped out to the assistance of a private who was surrounded by seven Russians. The sergeant dispersed them and saved his comrade's life. On the same day, he brought in a prisoner from the Russian line and also, when the Heavy Brigade was covering the retreat of the Light Cavalry, lifted from his horse a private who was badly wounded and carried him safely to the rear under heavy cross-fire.<sup>3</sup>

This was the sort of bravery and action beyond the call of duty that merited the Victoria Cross, which was awarded to Henry Ramage for his deeds on 25 October 1854 at the battle of Balaclava.

Military examples seem to provide clear evidence that cost is instrumental in changing a required act into a supererogatory one. It is a soldier's duty to fight bravely, but by awarding medals, we recognise exceptional acts of bravery. The Victoria Cross was originally awarded for 'a signal act of valour in the presence of the enemy'. In other words, where the soldier acted bravely beyond the bounds of duty. We can assume that Ramage did not have to go to the rescue of the surrounded private. And seven to one does indeed seem like a tall order. Medals are given for acts which it is assumed were not required under duty. They are awarded for supererogatory acts; acts which are supererogatory and optional precisely because they cost so much.

And isn't cost what comes to mind when we refuse to do something which we know is good? It's too much to ask, we say. As Kagan emphasises, it is the reply we most often give (in one form or another) when asked why we do not perform an act regarded as supererogatory by ordinary morality.

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<sup>3</sup> From a website run by Mike Chapman: [www.victoriacross.net](http://www.victoriacross.net)

Despite the obvious attraction of the claim, I am going to disagree with the thesis that cost to the agent is an explanation and justification for the optional nature of supererogatory acts.<sup>4</sup> I therefore side with Kagan in thinking that the appeal to cost fails as a justification for supererogation, although the conclusion that I draw from this is quite different from his. Of course, I also disagree with Kagan when he suggests that this is the only argument the moderate can run for such justification, so I will be seeking justification elsewhere.

However, Kagan is right to suggest that cost initially looks like a very attractive way of explaining why some acts are good but merely optional. We saw in Chapter 1 that a number of definitions of supererogatory acts assumed that cost was a necessary condition of supererogation, and that it is the degree of cost which makes an act supererogatory rather than required.<sup>5</sup> Portmore's account of supererogation also had cost as a necessary feature of such acts. I discuss in this chapter why I disagree with that view. I shall refer to those who think that cost does justify supererogation as 'appealers to cost'.

I want to identify two main problems with the proposal that cost is an explanation and justification of supererogation.

1. Costly duties; cost is not a sufficient condition for supererogation.

The first problem is that there are duties which can cost an agent a great deal, as we see in the case of soldiering. Queen Victoria went so far as to change the motto on

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<sup>4</sup> This is not to deny that cost is sometimes (perhaps frequently) a *feature* of supererogatory acts.

<sup>5</sup> David Heyd's definition of supererogation is an exception to the more usual definitions of supererogation which contain a reference to the degree of cost involved in the supererogatory act. My reasons for rejecting cost are similar to his, although Heyd does not elaborate on this topic. Heyd (1988) p. 145

the Victoria Cross from 'for the brave' to 'for valour', in case anyone should come to the conclusion that the only brave men in a battle were those who won the cross. Soldiers are after all required to be brave.<sup>6</sup> How do we differentiate between such 'hard' duties and supererogatory acts?

## 2. Cost-free supererogatory acts; cost is not necessary for supererogation.

The second problem is that some supererogatory acts do not cost the agent much. In my example of a small favour, it costs me hardly anything to take in my neighbour's parcel. Even in acts which do cost the agent a great deal, cost can sometimes be wiped out by the agent's desires and preferences, as Portmore suggested.<sup>7</sup> Some agents willingly and gladly perform actions which the normal observer might consider burdensome and costly. These agents frequently deny that such acts 'cost' them anything.

I shall deal with these problems in turn.

### ***4.2 Costly duties. What happens to an appeal to cost when we compare hard duties and supererogatory acts?***

Hospital staff, social workers, even teachers are amongst those who can risk injury and attack as a result of their jobs. Armed services personnel, firefighters, workers of whatever kind in war zones and the police more obviously take on this level of risk. There are therefore some 'hard' duties, where agents know that they risk severe injury

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<sup>6</sup> Urmson (1958) concedes that there are very hard duties and that we sometimes call people 'saints' and 'heroes' when they are performing a very hard duty, which some might find too difficult.

<sup>7</sup> Portmore thought that this had the effect of turning the act from supererogatory into required, however.

or their lives as part of their required actions. How do appealers to cost explain their claim in the face of hard duties?

They might begin their account like this. In Joe's Rescue example, if a firefighter turns up first, he is obliged to do his best to save the children at the risk of injury or death to him. Joe, as an ordinary agent, is under no such obligation, but if he chooses the supererogatory option, then he freely undertakes the role at that time.

Perhaps the applier to cost will want to make something of the fact that both agents have chosen to risk their lives, but the way in which they make this choice is different. In the firefighter's case, he does this through accepting his terms of employment and job description that he enters burning buildings. (He will also receive training and instruction on how to reduce the risks to both himself and his colleagues). Joe informally takes up the opportunity for self sacrifice on the spot.

Objectors to the appeal to cost might say that it seems odd to make the distinction between a supererogatory act and a required act merely because the *manner* of making this particular choice is different. We can bring the two cases even closer. Imagine that a trained firefighter returns to work and signs his papers on the day of the fire. Now his and Joe's acceptance of self sacrifice are separated by a matter of hours and differ only in the manner in which they were taken up. Why isn't the firefighter's rescue supererogatory?

Here is one possible answer the applier to cost might give. Role duties do not count as supererogatory because the agent has made a promise to fulfil acts which carry these types of risk. Thus, by virtue of being a promise, they become a duty. This is unsatisfactory, again because the two cases of the firefighter and Joe can be brought nearer together on this basis as well. Imagine that Joe shouts out to one of the

children in the burning building; 'Don't worry, I'll save you - I promise'. If we are to find a difference between the two cases, it seems to be this: the firefighter has a general obligation to take the risks described for as long as he stays in that role and on each occasion that they arise<sup>8</sup>, whereas Joe's obligation, if it is such, lasts for that case and that case only.

Is it possible that an agent can turn every supererogatory act into an obligation just by promising to do it? Even if Joe calls out his promise, ordinary morality might well regard his subsequent action as supererogatory and not required, despite his making a promise and thus apparently taking on an obligation. The reason is that some promises are too hard to keep; in other words, they cost the normal agent too much. This at least is what the applier to cost wants us to accept.

In the example of Gianna Molla, the suggestion that a promise is too hard to keep was implicit in her elevation to sainthood. According to Pope Paul VI, Gianna had remained 'heroically' faithful to the commitment taken on her wedding day. This commitment, according to Catholic doctrine, establishes a partnership for life between husband and wife, which is for the good of the spouses and also for the procreation and education of their offspring. So Gianna Molla in saving the life of her unborn child at the cost of her life was keeping a promise too, but the costs of keeping that promise meant that it was deemed by the Church to be beyond what was required. (She could have permissibly had surgery to save her life but which would have meant the inevitable death of her child).

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<sup>8</sup> If Joe were an off-duty firefighter, we would have to say that his promise extends only to his duty-time, but this example seems to put further pressure on the idea that there is no real distinction between the deontic status of the 'hard' duty and Joe's act.



There is another point related to promise-keeping. To differentiate between role duty and non-role duty performance we can look at the moral minimum required in each case. The firefighter, on duty and by virtue of his promise, has a substantial moral minimum to meet. Other things being equal, he must enter the burning building and attempt a rescue. He cannot turn away from the building because he is afraid. He must fulfil his obligation as a trained firefighter. Joe, as either off-duty firefighter or ordinary agent, may also have some moral minimum to meet. He might have to ring for the fire services if he is first on the scene, for example, or help stop the traffic if asked to by the firefighters, but he does not have to enter the building and attempt a rescue. Using the Betterness characteristic, we can say that either the firefighter or Joe performs supererogatorily if they do better than their respective moral minima. The difference is that the firefighter may have to pay significantly more in terms of cost in doing his duty than Joe because the minimum for the firefighter is higher.

An objector to the appeal to cost can suggest that we can use the idea of exceeding the moral minimum as an explanation and justification for supererogatory acts, without involving cost. For this to be successful, it must be clear that the moral minimum is established without reference to cost. There are a number of ways this can be done, but one way which is closed is using a consequentialist maximising principle to establish the moral minimum. (So it is not surprising to find that Kagan dismisses the idea of using a moral minimum as an alternative account to cost for the justification of supererogatory acts). On the other hand, the creation of circumscribed duties such as promise-keeping establishes a minimum fairly readily. However, creating a minimum for open-ended duties such as benevolence is much harder. I discuss this further in Chapter 6.

Those who want to appeal to cost might diffuse the problem that hard duties pose by pointing to the fact that even those performing role duties can perform

supererogatorily. So although in normal circumstances the firefighter's actions are required, whereas Joe's actions would be supererogatory, there are cases where the firefighter can perform supererogatory actions even in the course of doing his duty. This sort of behaviour is often recognised by medal-giving in the fire service, as well as in the military.

Objectors to the appeal to cost can point to differing intuitions in respect of whether duties stop short in circumstances of great danger so that continuing them in the face of extreme danger becomes supererogatory. Whilst the award of military medals, and the Victoria Cross in particular, was welcomed by some in the military, certain regiments held out against it, believing that it was a soldier's duty to do whatever was expected of him. This was a common view amongst the Highland Regiments:

'The 79th Cameron Highlanders were notable in that they had no VC winners until Sgt Donald Farmer received the award on 13 Dec 1900 during the South African War. This apparent lack of attainment was not a matter of chance, but a part of regimental policy and pride. In Victorian Scotland, the 79th thought that it was a soldier's responsibility to do his duty in peace and war, *that excellence was expected and that no reward should be sought for simply getting on with the job, whatever the dangers.*'<sup>9</sup> [my italics]

However, risking one's life when performing a role duty is often regarded as supererogatory. The case of Lisa Potts, the nursery teacher, who defended a group of small children from a machete attack, is one example. It was part of her duty to look after the children in her care, but not to the extent of risking her life for them. Likewise, the death of the head teacher Philip Lawrence, who tried to prevent a knife fight between two boys and himself became the victim can be regarded as another example of supererogation in the performance of role duty. This is possible because the moral minimum in each case stopped short of a requirement to give one's life to

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<sup>9</sup>Dr. Diana Henderson, *The Scottish Regiments*, Glasgow 1993 p. 136

protect one's pupils. In risking or doing so, both performed better than the moral minimum and so supererogatorily on my characterisation. Here we must assume that it is cost which pegs where the moral minimum is.

Perhaps the applier to cost can isolate a territory of moral high ground which is not occupied by hard duties, because even such duties are not that hard. It could then be argued that any performance which meets the other conditions for supererogation and which warrants this degree of cost is supererogatory, whether it be a continuation of duty or an act unrelated to duty.

Let us allow the applier to cost the argument so far and assume he has been able to carve out a territory of moral performance that is beyond hard duties, purely on the grounds of cost. So his position does not conflict with the idea that there are also 'hard' duties, because what is considered supererogatory is the moral area where even 'hard' duties give out. They give out precisely because they cost the normal agent too much, although it is accepted that some agents in some circumstances may do them, as in the case of medal winners. The supererogation may result from doing more of the sort of act that is a duty, as in the case of the Cameron Highlanders, who eventually decided that the horrors of the First World War meant that they should allow their men to be the recipients of the Victoria Cross after all. Or it might be a supererogatory act which bears no relation to duty, such as Joe's rescue.

An objector to the applier to cost could say that role duties do not give out at high levels; it is only normal human motivation that does. Part of the description of conditions for awarding the Victoria Cross refers to the 'extreme devotion to duty' which must have been shown<sup>10</sup>. So even medal winners were after all only doing their

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<sup>10</sup> [www.victoriacross.net](http://www.victoriacross.net)

duty. They are the exemplars which those in the same line of duty should be encouraged to follow. They were able to find the right motivation to complete their duties.

#### **4.3 What if motivation for very hard acts can be made easier?**

An example of Liam Murphy's demonstrates that motivation rather than the degree of cost might be an important factor in deciding whether an act is obligatory. He gives an example where he considers an agent would be *required* to give his life. This would be a counterexample to the applier's suggestion that 'hard' duties give out at the level of life and limb. Murphy's example supposes that you are the only person in a position to prevent a nuclear accident that would kill many thousands of people. If you do what is needed, you will receive a painless but eventually fatal dose of radiation. Do you escape in the helicopter, leaving many thousands to die, or do you, in effect sacrifice your life?<sup>11</sup> Murphy says:

'While many cases of extreme sacrifice involve actions that it would be motivationally very hard for most of us to bring ourselves to perform, I have here tried to describe a cases where this is not necessarily so. Undistracted by the issue of motivational difficulty, I am inclined to think it is not implausible, much less absurd, to say that you are required to sacrifice your life in this case'.<sup>12</sup>

I think it is difficult to decide this sort of example. Ordinary moralists might still consider the person who gave his life in this manner to have acted supererogatorily. Certainly the example puts pressure on the agent, so that if he escapes in the helicopter perhaps his behaviour looks rather less than honourable. It might be that the pressure to sacrifice his life in the long term stems from the fact that he doesn't die right away or because the numbers of lives that would be saved are so big, or perhaps

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<sup>11</sup> Murphy (2000) p.99

<sup>12</sup> *ibid.* p.100

from a mixture of the two. Murphy's claim is that it is because the motivation is easier. Whatever the answer, Murphy suggests plausibly that we can come up with examples where the motivation to survive can be distanced from the decision to act, so that we are more ready to give up our lives for others. His example achieves this through a time-lag, but I suggest it is just as convincing, if not more so, where we consider cases of agent preference, which I discuss in more detail below.

My conclusion is that ordinary morality will often regard the loss of life or near probability of loss of life in the pursuit of moral worth outweigh role duties as supererogatory.<sup>13</sup> However, making the motivation easier as in Murphy's example does appear to put pressure on the agent to perform the act, which would suggest that is it not the cost alone that is a factor in turning an otherwise required act into an optional, supererogatory one.

Kagan also suggests that changing the motivation of agents could result in their seeing otherwise optional acts as required. He asks us to consider the possibility that when agents are vividly exposed to the plight of others, rather than acknowledging it in the abstract, then they see that they are required to help people, where previously they might have thought that the help was optional. Famine relief agencies have made effective use of this technique of 'vividness' when bringing the needs of the poor in the developing world to the attention of the developed world.

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<sup>13</sup> Frances Kamm (1985) also considers that an agent may sometimes have a duty to die, for example if someone threatens to kill me unless I kill someone else. Given the ordinary morality constraint on killing, it looks as though this constraint overrides the suggestion that no one may demand of another that he gives his life. p. 130



Given the varying intuitions on this point, we are still not in the position that the applier to cost wants which is to say that cost justifies the optional nature of supererogatory acts.

#### **4.4 What if the agent values something more than his own life?**

The second objection to counting loss of life as a justification for supererogation is that it is conceivable that there are goods that the agent cares about *more than* his own life. In other words, there is a higher cost that the agent can pay than sacrificing his own life. Agents might consider that it is worth dying in defence of certain principles such as freedom or religious belief. Or they might consider that they care more about the life of some other person than their own. It is less 'costly' for the agent to give his life than to see his principles destroyed or someone he loves killed. These are the greater costs. If the agent therefore sacrifices these, shouldn't his action be supererogatory on the applier's account? But it is harder to motivate the appeal to cost for these kinds of acts. Whilst we might think that acts which involve loss of life and limb in pursuit of moral worth are supererogatory, acts which involve this kind of cost are less intuitively so.

For example, if I relinquish pursuit of my ideals (in the course of which I might have lost my life) in favour of peace, then this might be expected to be supererogatory. Examples might include recent attempts at peace in Northern Ireland where the different parties have had to reach compromises, or sacrifice some of their ideals for which they were ready to give their lives. Do we in fact consider this supererogatory or more a matter of 'the right thing to do' and good moral judgement? It is not clear that the high costs involved direct us toward the conclusion that they are supererogatory. This is because there is plenty of room for disagreement about what an agent should hold as a higher ideal than preserving his own life, and these types of

example bring the conflict of ideals to the fore. In the case of an agent's own life, ordinary morality assumes that we all value our own life highly. It is less connected with contentious values or values that, although the agent might consider worth dying for them, others regard them as misplaced in the circumstances or wrongly prioritised. The notion of an agent's life and limb as a high cost avoids these problems.

Even if we concede the argument to the applier to cost, the type of supererogatory act which is covered by an appeal to the cost of life and limb is restricted to heroic and saintly acts. It is not a satisfactory explanation and justification for the optional nature of supererogation in general. There is nothing to stop the applier to cost from stipulating that this is his only allowable set of supererogatory acts, but as Kagan points out this does not fit in with the moral phenomenology, where appeals to cost happen at every level to justify the optional nature of acts. So the problem for the applier to cost is not just that there are hard duties that appear to require the same sort of sacrifice as saintly and heroic supererogatory acts. It is that there are perfectly ordinary duties which seem to involve the same costs as other acts which ordinary morality regards as supererogatory.

#### ***4.5 Required and supererogatory acts with the same costs - a development of the 'hard' duties problem for the applier to cost***

The applier to cost faces an acute problem if he acknowledges that there are some required acts and some supererogatory acts which have the same cost. The cost need not be particularly high. This is a development of the problem of 'hard' duties, where the cost for in performing such duties is very high, so high in fact that it might make appealing to cost as a justification for not performing supererogatory acts with high cost difficult to sustain. So the fact that there are duties with very high costs makes it hard for the applier to justify his appeal for heroic and saintly acts of great sacrifice.

To add to the applier to costs' difficulty, there are many examples of pairs of more mundane acts in ordinary morality which have the same cost and yet where one is required and the other supererogatory.

To demonstrate, here is an extended version of the Weekend Example. I originally had a choice between engaging in the permissible personal project of writing my philosophy article or working for charity. Now assume I have also promised to have lunch with a friend. It will take me most of the day to travel to and from the place where we have agreed to meet. The day can be spent either writing the article, meeting my friend or working for charity. I have promised to meet my friend, however, so I must do that rather than either of the other two. It is my duty. But the cost of doing my duty is presumably the same as the cost that I would have incurred in performing the supererogatory act of working for charity; namely, the damage to my philosophy work of not getting on with that article. I must incur that cost for a duty, but I need not do so in the case of a supererogatory act. If the cost incurred is the same for both acts, how will the applier explain his case that working for charity is optional because of the cost involved?

In considering cases like this, it is hard to resist the conclusion that what is behind the applier's case is that a degree of cost makes an act optional only when certain goods are involved. It might be that in ordinary morality there is a ranking of goods which have different levels of cost 'allowable' against them, so that promoting those goods becomes optional only when that level is reached. In the case of promise-keeping, the level is quite high. If I make a promise to my friend to meet him for lunch, I cannot opt out of it merely because I have something else that I would rather do, such as writing my philosophy article, even if that work is worthwhile and part of my life plan.

I can, however, decide that working on my philosophy article is a good enough reason not to spend the time working for charity.<sup>14</sup>

Worryingly for ordinary morality, it seems that on the face of it there is more good to be achieved through working for charity than having lunch with my friend. If both costs are the same, why isn't working for charity required? In cases like these, the appeal to cost looks a lot less secure than it did when the applier suggested that Joe was not required to rush into the burning building to effect a rescue.

The suggestion from Kagan is that ordinary morality is forced to put a constraint based on cost on the requirement to perform benevolent acts. This is because the possibilities of our doing good for others are endless and morality would become impossibly demanding unless there was some form of limit in place. As I have suggested in my discussion on hard duties above, cost is an apparently easy limit to call on when it is high, because we frequently and understandably fail even in our duties when there is a significant cost to us. However, when the costs of optional and required acts are the same at a more mundane level, ordinary morality must have recourse to another explanation as to why one act is optional and the other is required. In my developed Weekend Example, ordinary moralists would claim that keeping promises takes precedence over certain duties of beneficence. Where the outcome of the beneficent act is very high, however, as it was in the case of Joe's rescue, then the agent is permitted not to keep his promise, but where the difference between the outcome of the beneficent act and the required act is not so great, then keeping promises always overrides the beneficent act.

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<sup>14</sup> This problem is highlighted by Frances Kamm (1985). She refers to it as the intransitivity of supererogation.

Interpreting my developed Weekend and Joe examples according to Kagan's views would lead to a further problem, however. Working for charity presumably means that lives would be saved, albeit indirectly. Ordinary morality does not view the outcome of Joe's rescue in the same light as working for charity, even if the number of lives saved per act is the same. Both acts are optional, but the immediacy of Joe's rescue act allows it to trump the promise-keeping, whereas the more indirect nature of working for charity does not. Given that the eventual outcome is the same, a consequentialist theorist such as Kagan would say that if Joe can perform his rescue rather than keep his promise then he should also be able to work for charity rather than keep his promise. Both acts would be required and not optional because of this. The consequentialist need only deploy a comparison between betterness of outcome to determine what is required. Cost is irrelevant.

Ordinary morality must do more work than simply comparing outcomes to establish what is required and optional. In ordinary morality, Joe's rescue is optional because of its high cost, but can be performed instead of certain duties because of its high value outcome. Working for charity is optional because, although it costs the same as the performance of a duty, the level at which cost operates to make a beneficent act optional rather than required is much lower than in the case of promise-keeping. It is also less clear that I could work for charity instead of keeping my promise because the immediacy of the outcome is not as clear as in the rescue case. In ordinary morality, there is a delicate ordering of precedence and stringency of acts which is a result of combining both the cost and outcome of acts together with the notion of the good of performing a duty which determines both when an act is optional and when it may be performed in place of a required act.

Of course, this amounts to no more than saying that ordinary morality is not consistently consequentialist, but also deploys deontological notions of the precedence



of certain duties. And this is precisely Kagan's point of criticism against the moderate or ordinary moralist. The ordinary moralist cannot explain satisfactorily how and when he deploys consequentialist rules and rules of deontology. The suspicion is that optional acts such as supererogatory acts are the result of inconsistencies in ordinary morality in deploying consequentialism and deontology. Even if we concede the ground of high cost acts to the applier to cost, the case for claiming that supererogatory acts are the result of inconsistency looks particularly strong when comparing two acts of equal cost, but where one is considered optional and the other required.

I shall now turn to the second problem which faces the applier to cost. What of supererogatory acts which cost the agent little or nothing at all?

#### ***4.6. Cost-free supererogation. Can the appeal to cost survive examples of low cost supererogatory acts?***

It doesn't cost me much, if anything, to do a small favour. Yet I need not do the favour. In Chapter 2, I described how Kagan rejected an appeal to moral autonomy as a form of cost which might apply in these cases and I agreed with him on this point. However, appliers to cost might suggest that although it doesn't cost me much to do this particular favour, the consequences of doing *every possible such favour* would be very damaging to me. (Think of the reams of management literature that is dedicated to persuading managers to say 'no' to trivial requests that are made to them, because it makes them so inefficient if they lose focus from their main objectives. Equally, the popular life-style guides, particularly those aimed at women, are full of exhortations to stop saying 'yes' to every favour that is asked. There is a danger you will be soaked up by other's needs and requests, they imply.) So the costs of always doing a favour might be great, even though one single favour might be of negligible cost.

Yet there is a difference in the moral phenomenology in terms of the agent's response between failing to do a favour and failing to do a heroic act which costs us life and limb. From within ordinary morality, I am absolutely clear that I am not required to sacrifice my life and limb in the pursuit of moral worth. I can think about examples of people who do so with a clear conscience; admiring them certainly, but not believing that I am required to do the same. I can read the stories of those who were awarded the Victoria Cross and know that I would not do the same in the same circumstances. I may not feel particularly ashamed of this. I can call the hero's act supererogatory without believing that I would ever be required to do the same or similar.<sup>15</sup>

However, with small favours the response, again from the ordinary morality standpoint, is different. There is a temptation to make excuses when we cannot perform a favour. It is hard to escape the conclusion that there is some sense of 'ought' surrounding the favour, even if it is a very weak sense of ought.<sup>16</sup>

Kagan suggests that moderates might differ over the question of very small cost supererogatory acts, some considering them required, others considering them to be supererogatory. In any event, the appeal to cost looks hard to support in such cases. The applier may want to develop the argument that doing *every* such supererogatory act will damage the agent's life plan, but presumably he thinks that, unlike the acts which cost life and limb, the agent ought to perform at least some of the acts. I discuss another way in which such acts might be justified as supererogatory in Chapter 6.

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<sup>15</sup> Skorupski makes this point when referring to Urmson's grenade example:

'Note that falling on the grenade to save our fellows is not something we have an obligation to do on some occasions but not all (as in Kant's conception of 'imperfect obligation'). We never have a moral obligation to do it.' Skorupski (1999) p.171n.21

<sup>16</sup> See Triantosky (1986)

A further problem in trying to appealing to cost comes when we consider the agent's preferences. We have already seen in Portmore's account that when an agent actually *wanted* to work for charity in the Weekend Example, the deontic status of the act changed from supererogatory to required. In Portmore's case, this was because the reasoning changed so that it was what the agent both had reason to do all things considered and had moral reasons to do. But, I shall argue, such an example has serious implications for an appeal to cost.

It is not uncommon to find saints or even heroes who when discussing their supererogatory performance claim that not only did they not weigh the cost to themselves, nor did they think that the acts were their duty, but they actually *wanted* to perform the act and it was no burden to them. In these cases what are we to count as cost? Perhaps the applier to cost might try to claim that if the saint or hero has paid or risked the cost of life and limb, as is often the case, then we can ignore the preferences of the agent. We could claim that no one had a right to demand that cost from the agent and the fact that they chose to sacrifice it *willingly*, or not even take it into account, does not alter the deontic status of the act. The consequences of following this line might result in having to describe the act as irrational, as in Portmore's case.

But now consider the case where other costs are paid by the agent, and yet they claim either not to recognise these costs or to pay them gladly and willingly. Effectively, the 'costs' disappear because the agent's interests do not coincide with the general perception of cost and interests. When Annalena Tonelli went to do pioneering health work in Somalia, then it may have seemed from the observer's viewpoint that she sacrificed her career (she was trained as both a lawyer and teacher) and her comfortable way of life in Europe. Yet she saw it as no sacrifice at all. In fact,

her happiness may well have depended on her pursuing her chosen course of action and she might even have regarded herself as making a sacrifice if she did not do this. If the costs disappear because of the agent's preferences, then we must at least consider the possibility which Portmore suggested, namely that the deontic status of the supererogatory act might change from optional to required. If we persist in seeing cost as justifying the optional nature of the supererogatory act then, in the above example, Annalena would have acted supererogatorily if she had returned home and continued her life fruitfully there, because it would have been more costly for her to do so in the sense that she did not want to do this - an intuitively unsatisfactory analysis of her actions, I suggest.

Recall also Urmson's example of the mother who sacrifices herself for her child 'out of natural affection'. He disallows such acts the classification of supererogation precisely for the reason that the agent wanted in some sense to perform the act, so perhaps preferences changed the deontic status for Urmson too. In Gianna's case, she was clear about what she wanted to do:

'According to family and friends she was serene but insistent throughout her pregnancy. "If you have to choose between me and the baby, save it, I insist", she told her husband..as the birth date approached.' <sup>17</sup>

It is unsatisfactory to see the status of an act change merely because of the preferences of the agent. It is quite clear that Gianna's act was not required. Helen Watt, director of the Linacre Centre for Healthcare Ethics in London said this of Gianna's act:

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<sup>17</sup> Reported in the "The Tablet" magazine, 22 May 2004 in an article 'Gianna's choice' by Frances Kennedy pps. 4/5.

'In refusing a hysterectomy, Gianna Molla was going beyond the call of duty...Refusing surgery to which you're entitled is heroic, but not morally required.'<sup>18</sup>

What seems to be happening when the saint or hero is happy to carry out their supererogatory deed is that an applier to cost is forced to change the deontic nature of the act from supererogatory to required, because the cost has effectively disappeared. The preferences of the agent act so as to lower the cost to the agent to almost nothing.<sup>19</sup> But this often results in a counterintuitive picture of supererogatory acts. We do not want to say, as Portmore would have to, that because Gianna was happy with her decision it was required and not supererogatory.

The issue of agent preference makes life very difficult indeed for the applier to cost. If I am happy to do an act which the applier to cost considers to be justifiably supererogatory on account of the cost incurred by its agent, then something has gone wrong with his account.<sup>20</sup> The applier can call me irrational of course, as does Portmore, but I have suggested that we do not want to call saints, heroes and other performers of supererogatory acts irrational. Cost is a superficial attempt at justifying the optional nature of supererogatory acts and it has too many problems to be a satisfactory solution. However, the problem of agent preference points us in two other directions where we might find a more robust justification.

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<sup>18</sup> *ibid.*

<sup>19</sup> This is not to say that the agent always fails to recognise the cost involved. They may even relish the opportunity to do something difficult, although there is perhaps something suspect in the agent who particularly loves performing difficult *moral* acts as opposed to engaging in intellectually or physically challenging non-moral tasks.

<sup>20</sup> There are not only agents who find it easier to perform moral acts which they rest of us would find difficult. We should also consider that there are agents who find low cost moral acts difficult to perform. Someone who has an irrational fear of germs might find it incredibly difficult to keep a promise to their neighbour of taking in parcels when he is away, however much he wants to keep his promise. If he overcomes his difficulty, it looks as though he is acting supererogatorily according to the applier to cost, although his action would normally be required if he gave an undertaking that he would take in the parcels. This is where extending the use of the term 'praiseworthy' beyond the supererogatory is useful. Ordinary morality could consider that such an agent had acted in a praiseworthy fashion because of his difficulties, whilst at the same time acting in a required, rather than supererogatory manner, and keeping his promise.



#### ***4.7 Two other lines of justification for the optional nature of supererogatory acts***

Firstly, the fact that saints and heroes want to perform acts that are considered difficult by the rest of us may tell us something not so much about the act but about their character. Liam Murphy suggests that, if the cost to the agent of performing a supererogatory act is the same as it would have been if he hadn't performed it, then something else must be at issue.

He claims that some examples of apparent extreme sacrifice might actually involve no such cost at all, because the hero would have died anyway. He raises the actual case of Captain Oates and Urmson's hypothetical case of a soldier throwing himself on his grenade to save his comrades. Murphy says:

'In both of these cases the heroic person would have died anyway; what is impressive is thus not the size of their loss, but rather their extraordinary characters'.<sup>21</sup>

So cost is not the justification for the optionality of these acts, because big costs can disappear not just through agent preference but because it is a cost that the agent has to pay regardless of whether he performs the act or not. Murphy asks us to consider why we think that Oates's behaviour was supererogatory in the sense of being better than the alternative. On his view, it cannot be that he chooses to pay a great cost, because he would have to pay that cost anyway. Murphy suggests that we look to something in the character of the agent who chooses to perform a supererogatory act. In Oates's case, presumably we look to the fact that he chose to consider the

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<sup>21</sup> Murphy (2000) p.99

possibility of saving the lives of others through his own certain death as a feature of his character.

There are certain sorts of people who find difficult moral acts easier to do than other people. It is unhelpful simply to assess the deontic status of their *acts*. We need to know more about the sort of person they are. If we approve of their actions, we can perhaps point to aspects of their character, suggesting that they are moral exemplars, and that we should be trying to emulate them. This of course is what the modern Catholic Church is hoping to achieve in their selection of saints. Even in the case of Gianna, one of her supporters was anxious to stress the point that it was Gianna's *life*, rather than merely the manner of her *death*, which qualified her for sainthood:

'One man who knows the details of Gianna's life like few others, and has no doubt about her saintliness is the Capuchin Father, Paolino Rossi. He was the Postulator of her cause, and dislikes the emphasis on the manner of her death. "It's an error to reduce her sainthood and her example to the last extreme gesture", he said. "It was the culmination of a life lived with great intensity and a profound love of God and her fellow man".<sup>22</sup>

Where would this assessment of character leave the deontic status of the acts of saints and heroes? If the agents wanted to perform them, then it looks as though we would have to say that they are required, but in a weak sense. Perhaps others who do not perform these acts are able to offer acceptable excuses for not performing them - excuses which would not carry weight in the face of full-blooded requirement. This is not at first glance a satisfactory answer for those who want to put supererogatory acts into a separate class, but it has a strong intuitive appeal as a solution. I consider

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<sup>22</sup> Reported in the "The Tablet" magazine, 22 May 2004 in an article 'Gianna's choice' by Frances Kennedy pps. 4/5.

further the suggestion that it is character rather than acts at issue in supererogation in Chapter 6.

The second direction that the problem of agent preference points to is to consider whether the agent of a supererogatory act considers an act required for him but not for others. I refer to this as the dual aspect of supererogation. It is a problem in itself, of course, because we normally think that required acts are required for all agents and not just some. Again, there is intuitive appeal, however. Saints and heroes frequently suggest that they were only doing their duty in response to praise at their actions. However, seldom, if ever, do you hear them suggest that you too should be acting likewise. In addition, although they may think that they are doing what is required, they are often very conscious of the loss or cost that their action involves. Here is Gianna again in her last days speaking to her sister-in-law:

'Do you know what it means to die and leave behind four small children?'

She was conscious of the cost both to herself and to her children of her action. So why should Gianna see her action as something she ought to do and yet everyone else see it as optional and supererogatory? How do we square this with the universalizability requirement of morality? I discuss this further in Chapter 7.

#### ***4.8 Comparisons between Kagan's rejection of the appeal to cost and mine.***

Kagan's rejection of the appeal to cost is as follows. The moderate cannot appeal to cost through *degree* alone, because the moderate does not simply appeal to very high levels of cost in order to make them optional and not required. The moderate frequently wants to call small cost acts such as favours optional. Therefore, the appeal

to cost must be based on the *nature* of the cost that is incurred in the supererogatory act. Kagan thinks that the moderate must be appealing to the cost of the loss of certain values or goods when he performs a supererogatory act. Specifically, the moderate will have to establish that there are certain goods which, because of their nature, stand apart from the overall good which normally determines which acts are required. It is to the loss of these subjective goods that the moderate appeals when he appeals to the cost of performing supererogatory acts.

In this chapter, I have also pointed to the difficulties in appealing to the degree of cost. There is a particular difficulty where two acts apparently cost the same but where one is supererogatory and the other is required. I have argued, however, that the most intractable problem for the applier to cost is the issue of agent preference. Here, even at very high levels of cost, the agent may want to perform the supererogatory act and he does not experience cost in the sense of a loss of goods or value of any kind, not even a special kind of subjective good in the manner that Kagan suggests. However, agent preference does not turn the supererogatory act into a required act in the way that Portmore suggests for two reasons. Firstly, I suggest that the onlooker still considers such an agent's act to be supererogatory. Secondly, the agent does not consider that his act is required for everyone.

There is a sense in which Kagan's account and mine of what the moderate has to do next is similar. On both views, the moderate will need to establish that we can see morality from two viewpoints. Kagan believes the moderate to be comparing the objective goods which compose the overall good with a set of subjective goods which for yet to be established reasons do not form part of this good. So for Kagan there are two sets of goods to be compared to generate the optional acts of supererogation.

I shall argue that a moderate who wants to justify supererogation believes that an agent considers some acts required only for him and that others will see that act as supererogatory. So I must establish how there are two viewpoints on the deontic status of acts.

In the next chapter, I consider whether the justification of the optional nature of supererogatory acts can rely on Kagan's idea of two sets of goods or on my specific proposal of the idea of two viewpoints. I also consider two consequentialist accounts which apparently avoid both the appeal to cost and the appeal to a subjective viewpoint in their implications for supererogation.



## **Chapter 5 Is a form of subjectivity necessary to justify supererogation?**

### **5.1 Why Kagan insists that the moderate needs subjective goods**

Kagan suggests that in order to justify supererogatory acts the moderate must establish that there is a set of subjective goods which does not form part of the overall good. The moderate was apparently forced into that position because, in his appeal to cost, the moderate wanted to say that he experienced a loss when he was required to promote the overall good in certain circumstances. This loss was sometimes sufficiently severe to warrant his not promoting the overall good, although he could still do so if he chose.

This was notably the case when the requirement to promote the overall good was very demanding and might cost the moderate his money, health or life. The moderate recognised that he had a reason to promote the overall good, even in these costly circumstances, but he also experienced such a significant loss that there appeared to be a reason not to promote the overall good. This resulted in the moderate's claiming that promotion of the overall good in such circumstances was optional, and indeed supererogatory.

Kagan suggested that there were no arguments available to the moderate to block promotion of the overall good based on the *degree* of loss, because the moderate would often claim that it was optional not to promote the overall good when there was very little cost in his doing so. Instead, the moderate's only recourse was to appeal to a set of goods which were not included in the overall good.

To recall the nature of Kagan's overall good: it included many goods, including the agent's self interest. The overall good was also impartial, which in Kagan's terms

meant that deciding when to promote the good could never be the result of the agent's favouring his interests any more than another agent<sup>1</sup>. Nor could the agent choose to sacrifice those interests, even if he was willing to. The set of subjective goods, on the other hand, should therefore include goods which put the agent in a privileged position with regard to their promotion. He could put greater weight on his own interests and also choose to sacrifice them with regard to these subjective goods. These goods will generate reasons to promote them, which will then vie with the *pro tanto* reason to promote the overall good. This will offer the moderate the opportunity of either promoting the overall good, and thus behaving supererogatorily, or acting in a merely morally permissible fashion according to the reasons stemming from the subjective set of goods.

I am assuming here that it is the promotion of the overall good that will be supererogatory and that the subjective goods will supply reasons for the alternative permissible act. This is how Kagan's discussion is structured. But could a supererogatory act stem from the subjective goods with the alternative permissible act arising from promotion of the overall good? I discuss this below at 5.10.

On Kagan's account, the establishment of a set of subjective goods serves two purposes for the moderate. Firstly, it offers him an opportunity to act partially either by furthering his interests in giving them greater weight than they might have from an impartial view or by choosing to sacrifice his own interests when the impartial view would have ruled otherwise. Secondly, it provides him with reasons which compete with the reason to promote the overall good and so set up the possibility of generating an optional act such as a supererogatory act.

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<sup>1</sup> Kagan (1989) makes it clear that it is not just *self*-interests that are involved here.

I do not agree with Kagan that the moderate needs to establish a set of subjective goods to account for the optional nature of supererogation. However, my own proposal that the agent sometimes sees acts of supererogation as required of him but not of others will require me to say more about what form of subjectivity, if any, is involved there. In addition, I must deal with the question of how the moral reasoning process works in the case of supererogatory acts on my account. On Kagan's view, this necessarily involves the establishment of subjective goods which then generate agent-relative reasons.

In this chapter, I firstly examine how agent-relative reasons are supposed to help in the justification of supererogation. I then discuss a consequentialist account of supererogation which avoids the distinction between agent-neutral and agent-relative reasons completely and also avoids an appeal to cost. I then turn to another consequentialist account which allows for the sort of goods which might stand outside the overall good. I argue that this could be developed into an account of supererogation. Finally, I discuss the form of subjectivity that my proposal will require.

## ***5.2 How agent-relative reasons are generated from a set of subjective goods***

Kagan suggests that the moderate needs to establish some reasons which stem from values outside the overall good, so that these reasons can compete with the *pro tanto* reason to promote the overall good. Establishing two types of reasons which can be compared is the first step in establishing a structure for supererogatory acts, because each type of reason will provide the grounding for the options. (We saw that Portmore did this by pitting moral reasons against non-moral reasons, which were based on self-interest. Kagan insists that self-interest is part of the overall good,

however, so this move is not available to him). Kagan suggests that the moderate must make the distinction between agent-neutral reasons which stem from the overall good and agent-relative reasons which stem from the subjective goods to get his justification of the optional nature of supererogation off the ground.<sup>2</sup>

Nagel originally made the distinction between agent-neutral and agent-relative reasons. His proposal is that the impersonal and personal perspectives are both necessary to a proper construal of morality. The dual perspective generates two types of reason which can be used to decide right action. The attraction of the impersonal perspective is understandable, claims Nagel. As agents participating in moral debate we want our moral reasons to be accepted 'from outside'. Framing them in impersonal terms is a natural way to do this. Nagel believes we want this acceptance not just from others, but ourselves too. It is we who demand the impersonal perspective in order to understand, justify and motivate our actions as moral agents.

Nagel believes that these impersonal reasons can be formed from a recognition that there are some primary goods which everyone aims at or is entitled to. Primitive pleasure and avoidance of pain are examples which allow us to formulate reasons that can be affirmed from an objective standpoint. They provide us with a 'hedonistic

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<sup>2</sup> Kagan (1989) considers the possibility that the reasons which oppose the pro tanto reason to promote the good may not *necessarily* be agent-relative. He says:

'Must the opposing reasons be agent-relative ones? Since, by hypothesis, these reasons can oppose and outweigh the pro tanto reason to promote the good, the answer depends on whether or not one can coherently maintain that a given goal lacks objective value, even though it is backed by agent-neutral reasons. If one can maintain such a position, then the opposing reasons need not be agent-relative ones (although they may be); if such a position cannot be maintained, however, the opposing reasons must be agent relative'. p.76 fn 15

This sounds suitably half-hearted and nowhere else does Kagan consider that there might be agent-neutral reasons which stem from a subjective viewpoint, so I do not consider this possibility further.

agent-neutral consequentialism'<sup>3</sup> which describes a significant form of concern that we owe to others.

Nagel argues however, that there is more to morality than impersonal reasons, and that other types of moral reasons must be taken into account in moral deliberation. Nagel distinguishes between two types of reasons, agent-neutral and agent-relative. He describes the difference as follows:

'The distinction between reasons that are relative to the agent and reasons that are not is an extremely important one. If a reason can be given a general form which does not include an essential reference to the person who has it, it is an *agent-neutral* reason. For example, if it is a reason for anyone to do or want something that it would reduce the amount of wretchedness in the world, then that is a neutral reason. If on the other hand the general form of a reason does include an essential reference to the person who has it, it is an *agent-relative* reason. For example, if it is a reason for anyone to do or want something that it would be in *his* interest, then that is a relative reason. In such a case, if something were in Jones's interest but contrary to Smith's, Jones would have reason to want it to happen and Smith would have the same reason to want it not to happen. (Both agent-relative and agent-neutral reasons are objective, if they can be understood and affirmed from outside the viewpoint of the individual who has them).'<sup>4</sup>

Examples of agent-relative reasons, according to Nagel, would include reasons arising from the desires, projects and commitments of the individual agent. They would also include reasons which arise from any special obligations that the agent has. These are obligations such as those we owe to family and friends. Notice that Nagel refers to the possibility of agent-relative reasons being *objective*, if they can be 'understood and affirmed' from those other than the individual who has those reasons. How is Nagel's position different from Kagan's own, on the one hand and Kagan's description of the moderate's position, on the other?

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<sup>3</sup> Nagel (1986) p.164

<sup>4</sup> *ibid.* pp.152-153



Kagan asserts that any reason that stems from a good which is a component of the overall good is an agent-neutral reason. He also told us that the overall good was impartial in the sense that if it generated a reason for someone then it generated a reason for everyone. On that basis, there is no difference between Kagan's reasons which stem from the overall good and Nagel's agent-relative reasons which can be understood and affirmed by everyone, despite Kagan's claim that reasons stemming from the overall good are agent-neutral. I therefore have some difficulty in understanding Kagan's use of the agent-neutral/agent-relative distinction in the context of Nagel's definition. Yet it is clear that Kagan has based his terminology on Nagel's definition.

I shall leave aside the difficulties of interpretation and proceed on the basis that Kagan thinks that his overall good cannot generate agent-relative reasons, and that these are necessary for an account of supererogation. They must be generated from a set of goods which are subjective in the sense that the agent can weight his own interests in relation to these goods out of proportion to others.

What are the implications of agent-relative reasons for a theory of supererogation? At first sight, it looks as though an agent can appeal to agent-relative reasons as reasons why he does not have to perform the supererogatory act. If he does perform the supererogatory act he can appeal to agent-neutral reasons to explain why the act has the special worth which makes it supererogatory. The agent-neutral reasons appear to give the supererogatory act both its Moral Worth characteristic and its Betterness characteristic. If an agent acts on agent-neutral reasons in certain circumstances, then the good that is promoted is better than the good which is promoted by the alternative permissible agent-relative reasons. It is presumably 'better' because there is an implicit ranking of goods whereby any act that promotes the overall good is better than an act which promotes a subjective good.

This can only be the start of an account of the optional nature of a supererogatory act, however, as merely making the distinction between agent-relative and agent-neutral reasons does not of itself provide an answer. After all, as Kagan reminds us, if the agent-relative reasons are strong enough to be morally decisive, shouldn't the act that they support be required (and the supererogatory act forbidden)?

Nonetheless, the distinction between agent-neutral and agent-relative reasons looks as though it is a promising one for a justifying account of the optional nature of supererogation. It makes use of the very strong appeal in ordinary morality that there is moral worth in promoting a good 'for the world as a whole' and yet that there are also valid reasons for not having to do this because we have goods which are specific to us, such as personal projects and duties to families and friends to which we must also attend.

However, Kagan's own description of the goods which make up the overall good make the necessity of this distinction puzzling. If, for example, promoting one's special obligations promotes the overall good, then that is what the agent is required to do. Likewise with one's projects. So it is not that these values are ignored on Kagan's account. If they win the maximising battle (and Kagan from time to time suggests that they might), then the moderate cannot complain. Not only is he allowed to write his philosophy and look after his family on Kagan's view, which according to Nagel will be the kind of values to generate agent-relative reasons, but he will sometimes be required to. Nonetheless, if the moderate can point to a substantial difference between the two types of reason, he will at least have the beginning of a justification of options. How would this distinction help in the case of supererogation?

### **5.3 How does contrasting agent-neutral and agent-relative reasons work in examples of supererogatory acts?**

Here is an example of a supererogatory act which appears to rely on the sort of distinction in reasons which Kagan thinks the moderate must make:

If Jane gives up her prospect of a comfortable life as a lawyer to campaign for and live with the poor and persecuted people in a country governed by the violent and corrupt, she is a heroine. Why? The explanation looks simple. She has foregone personal safety, comfort and prosperity in order to help people to whom she has no special obligation but who are in great need.

Jane's act fits all the characteristics of supererogation. It has moral worth because Jane has put the good of many others above her own and acting for the greater good is undoubtedly morally worthy. She has agent-neutral reasons to perform the supererogatory act. It is optional. In ordinary morality, there is no particular call on *Jane*, as an agent, to help these people; she has no special obligation to do so, yet she sees that because of their need and her availability to help, good would come of her action. No blame would attach to her if she took the other option and continued with her career, although helping the poor is regarded as morally better than this option. She has agent-relative reasons to pursue her career, reasons that are particular to her. These reasons might include making full use of her talents, providing a worthy service to her community and shaping her life in the way in which she intended when she undertook her legal training.

A theorist who wants to classify helping the poor in the Jane example as required rather than supererogatory might say that these agent-relative reasons operate as *excuses*, rather than justification, for her failure to take on a dangerous way of life.<sup>5</sup> If, however, we accept Jane's reasons as fully justificatory, then we have a very common model of the supererogatory act, whereby performing a great good is truly optional and there is no moral failure on the part of the individual who does not perform the act.

The theorist who is proposing this distinction between types of reason to start his account of options still has his work to do. Why is Jane's supererogatory act *better* than pursuing her career? According to my definition of supererogation it is always the case that the supererogatory act carries more moral worth than the permissible alternative(s); the Betterness characteristic always applies. But now the problem of pressure of requirement starts to bite. If the agent-neutral good is better than the agent-relative good, why isn't it required?

If the theorist makes the assumption that the agent-neutral good is necessarily better than the agent-relative good, he has two replies to this:<sup>6</sup>

(i) It is too costly to the agent to pursue the agent-neutral good. (We saw that Kagan considers this the only reply that the moderate can give. I agree with him that it is not an adequate reply)

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<sup>5</sup> Even as *excuses*, Jane's reasons may still pass a test of moral validity, despite not having the strength of full blown justificatory reasons. If we accept her agent relative reasons as having lower status than normal moral reasons, we can continue to see the example as one of supererogation rather than requirement, if we describe Jane's failure to do good as 'supererogatory'; in other words, she has done something bad in not helping, but it is not necessarily subject to moral blame.

<sup>6</sup> It may be that the theorist who makes the distinction between agent-neutral and agent-relative goods does not always consider that the agent-neutral good will be better than the agent-relative good. I consider this point below at 5.10.

(ii) The agent-neutral good is a moral good, whereas the agent-relative good is non-moral. It is permissible to choose to pursue a non-moral good over a moral good, but performing the moral good will then be better in a moral sense. (Portmore tries to establish this distinction by distinguishing moral reasons from 'all things considered' reasons. I argued in Chapter 3 that if the agent ignored the 'all things considered' reasons and acted on the moral reasons, he was acting supererogatorily but also irrationally, which was an undesirable consequence of making the distinction by contrasting rationality and morality).

I now want to consider whether Kagan is right in suggesting that the moderate must rely on the agent-neutral and agent-relative distinction to begin an account of supererogatory acts, by examining an account of supererogation which explicitly denies that distinction. If the justification of supererogation is adequate, then Kagan is wrong. Like Kagan's, it is a consequentialist account.

#### ***5.4 Pettit's account of consequentialism and supererogation***

Philip Pettit claims to show that consequentialism can accommodate all the features of ordinary moral psychology that are maintained by many non-consequentialists in their theory as both desirable and fixed.<sup>7</sup> Supererogation definitely counts as one of these features. However, Pettit still wants to maintain a consequentialist account of such features. This rules out using a distinction between agent-neutral and agent-relative

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<sup>7</sup>Pettit (Baron, Pettit and Slote 1997) says he wants his consequentialist theory to maintain the idea of human agents as sometimes acting non moralistically and usually non actuarially, in contrast to the usual conception of consequentialism. If he can do this, it will leave much of our normal motivational structure in place, including our desire to be partial and spontaneous. In contrast to a prescriptive moralist like Kagan, Pettit thinks we should accept our nature and believes that there is not much wrong with it.



reasons to justify supererogatory acts, as Pettit considers that the agent-relative reasons have no place in a consequentialist theory.

As I illustrated in Chapter 2, there is little or no room for supererogation on Kagan's account. Given the precedence of values at which he hints, we are safe to assume that in my above example Jane would be obliged to undertake her perilous new way of life. But Pettit's account is quite different from Kagan's. It is important to remember that he is content to let human nature and our existing motivational structures stand, because assumptions about our fixed basic nature have often been the starting point for the justification of agent-relative reasons and thence the justification for the failure to perform supererogatory acts<sup>8</sup>. Pettit, however, will not follow this path.

Pettit recognises that one of the main objections to consequentialism is 'overdemandingness', which is very much in evidence when considering supererogatory acts. A straightforward consequentialist theory, such as Kagan's appears to require us all to be saints and heroes, when we actually want to say, in accordance with our intuitions, that there are some actions which are good, but which are not obligatory. Pettit's attempt at dealing with this objection is to suggest that the best option according to consequentialist calculations is not the only option which may be *justified to others*.

This is not to say that he opts for the solution of the disutility of denunciation, whereby we can say that utility is best served if we do not denounce people for the failure to be saints and heroes. I agree when Pettit says that this looks an unsatisfactory solution for the consequentialist. It would be equally unsatisfactory for many theorists who want to classify supererogatory acts separately. Typically, they do

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<sup>8</sup> See Nagel (1986) p. 204

not want to think of supererogation as a means to an end, but as something special in itself.

Instead of appealing to the disutility of denunciation, Pettit suggests that we look at the decision an agent has to make in the context of others who are also faced with that option. In Jane's case, she is not the only lawyer who could make the choice to serve those in need; it is an option which presents itself to others in similar circumstances. Therefore, Jane's choice may be influenced by how much others do in respect of this choice. Pettit terms it as treating other agents as 'parametric'. He says:

'I must see myself as challenged in the demand for justification to show that the option I choose does indeed represent the best I can do, in those circumstances, for the promotion of the relevant values. If other agents are treated as persons who may be engaged by any demands that engage me, however.....then I may see their failure to contribute to the good as being on a par with mine and I may see myself as called upon in the demand for justification to show that I am doing at least my bit. Whatever shortfall has to be made up, the onus falls on those others, not on me.'<sup>9</sup>

So in some supererogatory examples, such as that of Jane, others are equally called upon to justify themselves for their failure to help the people she has identified as being in need. This can legitimately affect her choice of option, according to Pettit. He calls this assessment of choices the 'secondary' assessment which only comes into play if the promotion of the value is not addressed *to the agent alone*.

In Pettit's method of escape from the overdemandingness objection, it looks as though an agent is able to make different choices depending on whom the moral demand is directed at. If the demand is made only on Jane (let us say her elderly mother needs her close by and not in a foreign country), then Jane must presumably make the straightforward 'best option' choice, because it is not a demand directed at

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<sup>9</sup> Baron, Pettit and Slote (1997) p.165

anyone else. If a demand, by contrast, is made on Jane and others like her to help the poor, she is permitted to make a 'less than best' choice in consequentialist terms, using Pettit's 'parametric' formula. She can choose to stay at home and pursue her career, although she would have to 'do her bit' to help those whose need she had identified. If on the other hand, she chose to go and work for the poor, this would be doing more than she is required to do, more than her fair share, and as such would be supererogatory. Simply, supererogation on Pettit's account is to do more than one's fair share.

Pettit's account of supererogation avoids two features which Kagan claims are unavoidable in a justification of supererogatory acts. Kagan claims firstly that it is inevitable that there is an appeal to cost in the face of the overdemandingness of his form of consequentialism. Secondly, this appeal to cost in turn leads to the necessity of a separate set of subjective goods which will generate agent-relative reasons to support the option not to perform the supererogatory act.

Pettit acknowledges the problem of overdemandingness in a consequentialist theory, but solves it by an appeal to fairness, not cost. If a demand is made on an agent which is a demand on everyone, or more than one person, then meeting that demand is only obligatory up to the level of the agent's 'fair share'. Doing more is supererogatory. Pettit's answer relies on the idea that the promotion of some values such as beneficence is a shared responsibility. His agent does not have to perform the supererogatory act and promote the agent neutral value of beneficence if they have done their share. They are effectively excused obligation, not because of the cost to them, but because the obligation to promote this value is shared and if they have done their share, then the obligation has been met. If they choose to do more, that is also acceptable, and indeed supererogatory.

### **5.5 Problems with Pettit's 'fair shares' account of supererogation**

Is Pettit's a satisfactory account of supererogation? I measure this in three respects. Firstly, I consider some general worries about the use of fairness as a limit on beneficence. Secondly, I ask whether Pettit's account meets the four characteristics of the supererogatory act which I established in Chapter 1. Thirdly, I consider whether all the types of supererogatory act in Chapter 1 are covered by such an account.

Is it acceptable to use fairness as a method of setting the limit for beneficent acts and so to suggest acts which exceed that limit are supererogatory? There are two areas of concern for theorists who want to support the idea of supererogation as a desirable feature in morality.

The first point is that appealing to fairness in this way means that supererogatory acts could only be a feature of a non-ideal world, and never of an ideal world.<sup>10</sup> This is because if everyone were doing their fair share, as in an ideal world, there would be no 'extra' available to do and thus no opportunity to supererogate. The opportunity to perform supererogatory acts only comes about because some people are not doing their share in the face of a collective demand. Some theorists who see supererogation as a desirable feature in morality, rather than a by-product of the average agent's frail human nature, might not want to see supererogatory acts in this light. Portraying supererogation in this light gives back the initiative to a prescriptive moralist such as Kagan who thinks that right action should be determined by what should happen in an ideal world, rather than accommodating for the non-compliance of agents for whatever reason.

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<sup>10</sup> Liam Murphy has developed Pettit's idea of a fair shares morality with particular regard to the limiting of beneficence through the concept of fairness. His account relates to a non-ideal world. Murphy (2000).

Secondly, we should note that using fairness as a limiting device on beneficence might not mean that overdemandingness is curtailed. World poverty is sufficiently grave that even merely doing one's fair share would arguably place considerably more demands on individuals in the developed world than is currently the case. So fairness might not limit beneficence to the extent that Kagan's moderate, say, would want.

Can fairness be applied as a limiting mechanism on beneficence, when if the agent did more by way of beneficent acts, more lives would be saved? This is a question of ranking of goods. Expressed in this stark way, with fairness for the individual agent competing with the saving of lives, might make some feel uncomfortable. I return to the more detailed implications of this objection below at 5.8. In response, we can appeal to what is really at stake in a fair shares morality. Why should I sustain more losses in a beneficent act than I would otherwise have to if you were complying? Why should there not be some degree of recognition of achievement for someone who has done his fair share in comparison to someone who has done nothing? If I have given £10 to charity and you have given nothing, I feel ill-used if my action counts for as little as your inactivity, even when the maximising principle dictates that I should have given £10,000.<sup>11</sup>

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<sup>11</sup> Murphy (2000) makes this point. But against it, Elizabeth Ashford (2000) notes that in rescue situations 'agents' complaints that a principle requiring them to help is unfair is likely to be outweighed by the complaint of those who will die without the agents' help'. p.433. I say more about rescue cases below at 5.8



### ***5.6 Does Pettit's account of supererogation meet all the characteristics of the supererogatory act?***

Pettit's account is an improvement on Portmore's, in that supererogatory acts on Pettit's view meet all my four characteristics. A supererogatory act is optional according to Pettit, because the agent only has to do his fair share, although he is permitted to do more. It is moral; there is no question that the additional worth brought about by doing more than one's fair share is not moral. The supererogatory act is better than the permissible alternative of simply doing one's bit, because more moral worth is generated by doing more than one's fair share. Finally, there is no suggestion that to do more than one's fair share is irrational on Pettit's account, so the rational characteristic is also met.

### ***5.7 Does Pettit's account deal with all types of supererogatory act?***

Although supererogatory acts meet all my four characteristics on Pettit's account, there is a problem as to the scope of supererogatory acts that it could cover. Pettit's approach is limited to supererogatory acts which promote only those values where there is the possibility of collective responsibility, such as beneficence. This might cover a large number of acts which we intuitively think of as supererogatory. That is because beneficence occupies a large slice of morality. It is also the value which is most troublesome to the agent in that it sometimes places unwelcome demands on him if he is forced to promote it at all times without limit. On Pettit's account, the agent avoids the appeal to cost, which places him on a weak footing because it looks like an excuse for not doing the supererogatory act. Instead, he can appeal to the more robust value of fairness, which might have a place in this set of values for its own sake and not just as an excuse for not performing a supererogatory act.

However, some supererogatory acts do not look as though they could be accounted for in this fashion. Gianna Molla's act of self-sacrifice is the first such example. She was promoting the value of the sanctity of life, but it is difficult to see how in her supererogatory act of sacrificing her life for her child she was doing more than her fair share. There was no *shared* demand. As the mother about to give birth, only she was in a position to dictate how she should act. (One possible way of developing the notion of fairness might be to say that doing her fair share was to have surgery to save her life and that anything beyond that was supererogatory, but then it looks as though we have rather arbitrarily equated the ordinary morality minimum with her 'fair share'.) On Pettit's account, because the demand is addressed solely to Gianna, her action would be obligatory, not supererogatory.

Secondly, how would small favours be accounted for as supererogatory within a fair share morality? If my neighbour asks me to take in his parcel, I have suggested that we regard it as optional; it is a favour and not required. It is not especially demanding for me to do the favour. If I do not want to do the favour it seems odd to say that I justify this by appealing to the fair shares concept. I either do it or I don't. However, one way in which a fair shares principle could apply to small favours is to say that we only do our fair share of favours in terms of restricting ourselves to a certain number. If my neighbour were always asking me to do favours, I might well consider myself justified after performing a certain number in saying that I had done my fair share; it was time for other neighbours to lend a hand. (Or for my neighbour to stop asking for favours). Nonetheless, the appeal to fairness seems more difficult to apply in the case of small favours than in the case of general beneficence. I return to the discussion of this type of act in Chapter 6.

The third type of supererogatory act which is not handled by the fair shares approach are acts of mercy and forgiveness. The parents of Amy Biehl could not look to anyone

else to share the act of forgiveness in respect of the murder of their daughter. The fact that they did forgive might be considered supererogatory, but there is no question of their doing more than their fair share.

### ***5.8 Rescue cases as a counterexample to a fair shares morality***

A final objection to the use of fairness as a limiting mechanism on beneficence generally, rather than supererogatory acts in particular, comes from considering rescue cases. Rescue cases look as though they pose a counterexample to the collective principle of beneficence. In some cases ordinary morality considers rescue cases as required and in others supererogatory. In either event, appealing to fair shares in rescue cases just does not seem to work. I do not stand around the pond with a drowning child waiting to share out the responsibility with others who are also there. The ordinary morality response is that it is incumbent on me to act. I may not even notice if others are there. To push the example further; if there are two children to be saved, it would be regarded as unusual to say the least, if I rescued one but failed to do anything for the other on the basis that it was another's responsibility.

Are rescue cases really a counterexample to a principle of collective beneficence? Perhaps we can come up with a definition of a rescue act based on a number of differences between such acts and those of general beneficence, which mean that they are a different class of act.<sup>12</sup> But is it necessary that they operate under a separate principle from other beneficent acts?

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<sup>12</sup> Although Peter Unger (1996) mounts a credible attack on any attempt to do this, showing that the features of rescue cases are all present in acts of general beneficence. Extending this point, Elizabeth Ashford (2000) suggests that the degree of world poverty creates a constant 'emergency situation', with the implication that there should be no deontic difference in our response to an ordinary morality-type rescue case and the more diffuse demands of world poverty.

Murphy is not optimistic that a collective principle of beneficence as used in Pettit's account will serve in rescue cases. Nonetheless, he tentatively puts forward two alternative suggestions.

Firstly, he proposes judgements about actions in rescue cases are judgements about an agent's character rather than his actions. If an agent fails to perform the rescue in a case where ordinary morality says that he should have done, our condemnation is a condemnation of character rather than action.

Secondly, rescue cases might be special because the needs of the victim are 'conspicuous' to the agent in a way in which the needs of the victims of generalised world poverty are not. However, this does not change the moral requirement on the agent to act.

I consider the first point in the next chapter.

As far as the idea of conspicuousness is concerned, we should note first that the maximisers such as Kagan can turn this to their advantage. As I mentioned above, Kagan has a suggestion that we should all develop our capacity for 'vivid belief' of the sort that is at work both in rescue cases and where we have special obligations or partiality, so that it works in every case of general benevolence. We would then be motivated to take the actions necessary and make the sacrifices necessary to do the amount of good for others that is required to secure their basic well-being.

Even where we have the sort of vividness of someone's plight that Kagan wants, in some rescue cases we still are not always required to act. Ordinary morality does not consider that Joe must enter the burning building, however vivid his perception of the danger. If he does so, it is supererogatory. I do have to save the child drowning in the

pond if it is easy for me, however. Rescue cases are sometimes required, sometimes supererogatory and it looks as though the change in status depends on something other than the collective principle of beneficence.<sup>13</sup>

To conclude, Pettit's account is incomplete because it does not cover the full range of supererogatory acts. In the case of Gianna's self-sacrifice, she did more than she was required to in a way which was very different from 'doing her fair share'. 'Doing one's fair share' is not a necessary condition for a supererogatory act, then. Equally, it is sometimes required, rather than optional, that we do more than our fair share, as in rescue cases, and so 'doing more than one's fair share' is not sufficient for supererogation. In that the fair shares principle of morality turns out to be neither necessary nor sufficient for supererogation; it falls into the same category as cost; intuitively appealing in respect of certain supererogatory acts, but unable to deal with the full range of such acts.

Even if Pettit's account of supererogation is only partly successful in that it cannot deal with rescue cases, it is nonetheless interesting because it highlights the structures of moral theory which are necessary for supererogation. Pettit's account is consequentialist, in that the right action is determined by the good. No distinction is required between agent-neutral and agent-relative value. Only agent-neutral values are allowed. However, at least one of these values, namely beneficence, is a collective value in that it is a value we all share. When we are faced with the possibility of promoting this value, we are permitted to do either only our fair share or to

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<sup>13</sup> It looks as though the deciding factor as to whether I have to act in rescue cases depends on how risky or costly it is to me. If it is easy to save the child from drowning in the pool, then I am required to. If Joe risks his life going into the burning building, then it is optional to do so. It is precisely this sort of example Kagan uses to demonstrate that the moderate is appealing to cost in the cases of all optional acts. Any alternative proposal must be robust enough to stand up the sort of appeal to cost which rescue cases appear to offer.



supererogate by doing more of it. Kagan's claim that agent-relative reasons were necessary for the justification of supererogatory acts is shown not to be right - and demonstrated by a consequentialist account to boot.<sup>14</sup>

### ***5.9 Do personal relationships and physical proximity mean that there must be at least some subjective goods?***

In Chapter 2, I considered the list of goods which Kagan thought might be candidates for this set of subjective goods. He thought that the moderate could not explain why any of them should stand outside the overall good. I argued that the moderate had the better of Kagan in his claim that partiality in the form of love and friendship stood outside the objective viewpoint and yet merited moral status.

Supererogatory acts often appear to be a contrast between acts of partiality and acts of impartiality, where the impartial acts are considered supererogatory and the partial acts are considered a permissible alternative. On an ordinary morality view, it is good that I look after my family's interests, even out of all proportion to their needs, provided I am not infringing a constraint. But if I choose to look after strangers with great need instead, that is often considered supererogatory. If we do not allow for this partiality, then I must treat my family with no greater or less concern than others, and it may be that looking after strangers becomes required. In ordinary morality, partiality may also bring about required acts. We have special obligations to certain people, notably to those near and dear to us, but also to others with whom we have a

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<sup>14</sup> Kagan also mentions 'equality of distribution' as a possible component of the overall good. There might therefore be a way of re-packaging Pettit's account to suit Kagan's account. Nonetheless, I think that Pettit's account of supererogation is sufficiently against the spirit of Kagan's that it adequately demonstrates that a subjective viewpoint is not necessary for some cases of supererogation. Pettit's account does require a distinction between situations of ideal and non-ideal compliance, however; a contrast which Kagan alludes to, particularly in his discussion of the overall good. On Pettit's account, supererogation takes place in a situation of non-ideal compliance.

special relationship, such as our employees and employers, customers, colleagues and so on.

It has been a particular criticism of consequentialism that it does not recognise this type of partiality. More precisely, it is not that consequentialism does not recognise the partiality that is the special obligation, but that it does not allow the *overweighting* which ordinary morality gives the goods associated with this partiality.<sup>15</sup> If this bias can be explained and justified within a consequentialist framework, then this will be the first step to generate supererogatory acts that rely on the distinction between the partial goods of friendship and love and the impartial good of general beneficence. The second step will be to explain and justify why the agent can sometimes give up this bias in favour of the overall good, without its being required that he does so, or without his contravening an obligation with regard to the partial goods.

Frank Jackson has developed an account which attempts both steps. He defends consequentialism against the objection that relates to a neglect of partiality. Using my example, if Joe enters the burning building and finds one of his children in danger and one other person, say a well known doctor who can save many lives if he survives, then the crude consequentialist result is that, if only one can be saved, then Joe has to rescue the doctor at the expense of his child, thus maximising utility. The objection is both to the result, which is wrong by ordinary moral lights, and to the thought that a calculation of any such kind should be carried out.<sup>16</sup> Much attention has been

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<sup>15</sup> Kagan (1989), for example, explicitly allows for special obligations in his overall good. p.255 But this does not help the moderate who has to explain and justify the type of supererogatory act where the agent can choose between exercising his partiality and waiving it in favour of the overall good. On Kagan's account, the partiality either creates an obligation or it doesn't.

<sup>16</sup> In case we think that consequentialists would shrink from such a stark example, Jackson refers us to Godwin's example of having to choose between rescuing Fenelon, a famous author and archbishop, and a valet who happens to be the agent's father from a burning house. Godwin's re-considered conclusion after the reception that greeted his first answer that you ought to abandon your father is that rescuing your father is the wrong action but at the same time the action which

devoted to how consequentialism can preserve this sort of partiality, which Jackson terms the 'Nearest and Dearest' precedence.

The bearing on supererogation of preserving this partiality is this; supererogatory acts are often classified as such because it seems that in performing the act, the agent has given up partiality in favour of the greatest good. Jackson cites Mother Teresa as an example of someone who did just that. It seemed that she had:

'the ability to carry through a demanding program of action which benefits a group of people which, though tiny by comparison with the population of the world, is large by comparison with the circle of family, friends, and associates that provide the principle focus of action for most of us. They [people like Mother Teresa] do not seem to be dependent on the kind of close personal relationships that are essential to keep most of us from being outrageously selfish'.<sup>17</sup>

Consequentialism is a theory about action, about what we ought to do, Jackson claims. The right action is determined by how much good is produced, and usually there will be a number of different acts available. On a straightforward reading of consequentialism, we have to choose the one which maximises utility. But more detail is needed on how this happens, and this detail turns out to be important for Jackson's support of Nearest and Dearest values.

Is the right action determined in an objective manner, retrospectively, so that we look back at what the agent has done, agree that he maximised the good by his action and conclude that his action was therefore the right one? Jackson rightly points out that there is a practical, and therefore ethically relevant, problem with this. How does that help me, the agent, find out what I have to do now? Jackson's examples point out that there can be a lack of knowledge on the agent's part (through no fault attached to the

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springs from the right character.

<sup>17</sup> Jackson (1991) p.481

agent) which can lead to a different action at time T1 from the action that the agent would take with full knowledge at time T2. Does the agent look back at his action at time T1 and say that it was the wrong action? Or does he accept that it was the best that he could do at the time? Jackson's argument is that we should live with a form of subjective consequentialism; subjective in the sense that the action is taken according to the agent's beliefs at the time of the action (but disallowing for 'culpable ignorance' of the agent).

So for example, Joe is considering whether to rescue the children in the burning building at great risk to himself, when a bystander calls out that he can see the fire engine on the way. Joe considers that the best course of action is that experts should effect the rescue and steps back to let that happen. Unfortunately it turns out that the bystander is a hoaxer and no one has alerted the fire service. The best course of action, with full knowledge, would have been for Joe to attempt the rescue himself, but with his knowledge at the time he did the right thing.

Jackson's account of consequentialism relies both on the agent's state of beliefs at the time of action, rather than a world view, and on the degree of knowledge that the agent has at the time, as opposed to a later date. As far as an account of supererogation goes, there could be a useful benefit from pursuing an account which relies on this epistemological gap. It might give us a plausible answer to the puzzling phenomenon that many people who perform heroic acts respond to acclaim by saying that they were only doing their duty. On Jackson's account, this could be explained by a purely epistemological gap between the agent and the observer, rather than a moral one.

When my Balaclava hero, Henry Ramage, rode out to rescue the private surrounded by seven Russians, the chances are he did not count them and consider that it was

supererogatory to take on so many of the enemy. He just thought that he ought to rescue his comrade. If it all seemed very dangerous, that was no doubt part of what he expected and he may have made little or no distinction between dangerous situations (which he lived with on a daily basis) and very dangerous (where there is a strong chance that he might have lost his life). To have received the award means that he was observed by others. His action was supererogatory on their view, the 'world' view, but only obligatory to Ramage.<sup>18</sup>

Explaining this observation as an epistemological discrepancy has the benefit of preserving all characteristics of the supererogatory act, with one slight concern that the act does not present itself to the agent as optional when he performs it, but I do not see this as a major flaw. Of course, another concern is that it would not necessarily account for all of the cases of supererogation where the agent thought it was his duty to perform the act.

Jackson then turns this epistemological discrepancy to account in answering why we favour those who are nearest and dearest to us. We have, he says, 'a special epistemological status with regard to our nearest and dearest'. It is this we should concentrate on, rather than agent-relative preference, when we seek to explain actions which appear to favour our nearest and dearest at the expense of the greatest impartial good. It is important to note that Jackson does not think that this means we can sit complaisantly favouring our nearest and dearest when strangers are in greater need. He agrees with critics that we do operate a bias in favour of our loved ones based on value rather than the epistemological account above. Thus many

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<sup>18</sup> Another VC recipient, John Kenneally, recalls the circumstances of his own bravery: 'This was no time for fear; a stranger, 'don't-give-a-damn' feeling takes a grip. This is something every infantryman feels when he is constantly exposed to death in brutal and violent forms.' Arthur (2004) p.450. The idea is that soldiers in the midst of danger do not see the situation in the same way as if they had come to it from a safe, normal environment.



supererogatory acts in ordinary morality which rely on contrasting impersonal and personal goods might not pass the test on Jackson's account. They might turn out to be required. He says:

'It is no objection to consequentialism that, according to it, we ought to do more than we in fact do for people we hardly know. We ought to do more for people we hardly know. We are too tribal. The suggestion is that a considerable degree of focus on our family and friends, enough to meet the demand that our lives have a meaningful focus, is plausibly consistent with living morally defensible lives according to consequentialism'.<sup>19</sup>

Jackson tackles an obvious objection. If it is acceptable to focus on the needs of a small group of people (because our epistemological limits stretch only so far) why is it that it is usually our family and friends and not a small group of people in greater need somewhere else? In Annalena's case, she did in fact minister to a small group of people with very specialist needs who were not her family. Over the years she grew in knowledge and understanding both about their way of life and the diseases and ills which they fell prey to.

'She..became a leading expert in the treatment of TB even though her qualifications in health - she was a lawyer and a teacher- never extended beyond diplomas.'<sup>20</sup>

She worked against the practice of female circumcision but 'respected the extreme sensitivity to outsider interference in a custom endorsed by centuries of tradition'. In other words, she behaved towards them in much the same way as we do towards close family and friends, taking on specialist knowledge if it relates to their interests and welfare and demonstrating sensitivity and care if we want to change or challenge their actions. Why doesn't Jackson's form of consequentialism demand that we seek

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<sup>19</sup> Jackson (1991) p.475

<sup>20</sup> Reported in the "The Tablet" magazine, 11 October 2003 in an article 'For the love of Africa' p.10 by Maggie Black.

out a small group of people to help (and in the developed world we can take it that this will normally be a different group of people from our immediate family) and devote ourselves to them in the way that Annalena did?

Jackson's answer to this puzzle relies on a story about human nature. In principle, we should do what Annalena did, but we must take into account what we would be most likely to succeed at and carry through. For most of us, that does not involve leaving our family, travelling to a remote part of the world and learning about dangerous diseases and unfamiliar customs. We do better at home, where our probability of carrying through what we have to do to help our small circle has a much better chance of success. He concludes:

'the consequentialist can plausibly explain agent relativity in terms of the role probability plays in the recovery of what an agent ought to do from the consequentialist's value function. The injunction to maximise *expected* moral utility.....means that the consequentialist can accommodate our conviction that a morally good life gives a special place to responsibilities toward a smallish group. *Which* smallish group is another question, and here I argued that for most of us the group should be chosen tribally. Because of empirical facts about our natures, that choice decreases the chance that we will backslide'.<sup>21</sup>

Could Jackson's account be of help in determining whether the rescue cases (which were a stumbling block for Pettit's account) could be distinguished from other acts of more general beneficence? The physical proximity that persists in rescue cases makes the agent more epistemologically confident. I can see the child in the pond, see the life belt and know that I have a high prospect of success in rescuing the child all by myself. I therefore think that I am required to. I am less confident about solving world poverty all by myself.<sup>22</sup> I need to share that responsibility to have a reasonable chance

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<sup>21</sup> Jackson (1991) p.481

<sup>22</sup> In discussion, Barbara Herman suggested that there was an element of "I can.. therefore.. I ought" about certain supererogatory acts. The inability to see the effectiveness of one's contribution to world poverty can lead to the conclusion that one is not morally obliged to do anything (much). The

of achieving success. This might *explain* why in ordinary morality the agent is not required to act in certain cases of benevolence, but according to Kagan it would not *justify* his actions.

Jackson's account preserves the precedence of values which exist in ordinary morality and can be interpreted to give a satisfactory account of supererogation within a consequentialist theory in two ways.

Firstly, the idea of the epistemological 'gap' that might exist when a hero undertakes a supererogatory act could explain why the agent subsequently states that he was only doing his duty. The act is required on the agent's view but supererogatory on an onlooker's, where the difference in deontic status is explained by an epistemological 'gap'.

Secondly, by allowing the form of partiality which stems from close personal relationship to act as a reason for permissible acts in a consequentialist account, Jackson could presumably make sense of any supererogatory act which relied on the idea of privileging people other than those whom we normally favour. So although this would not include Gianna's Sacrifice, because it is permitted but not supererogatory to favour your family, it would include Joe's rescue as I suggested above and also Annalena's life. Her adoption of a small group of people who were not her family and her ability to live her life without the normal structure of relationships was not the result of privileging the small group of people we normally expect and as such it was exceptional and supererogatory.

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immediacy of the rescue situation forces the agent to consider all possible routes to rescue and on determining one, even a dangerous one, the agent deems that he is obliged to do more than might be considered morally required.

Unlike Pettit, Jackson has made a case for subjective goods within a consequentialist theory, and this has led to the possibility of justifying supererogatory acts which involve the contrast between reasons stemming from these subjective goods and those which arise from promoting the overall good in Kagan's sense. According to Jackson, we are permitted to act on the reasons which relate to the subjective goods but, on my interpretation of his account, if we act so as to promote the overall good in these cases then we have acted supererogatorily. However, I conclude that neither Pettit nor Jackson's account could lead to a justification of the full range of supererogatory acts.

### **5.10 Conclusion**

Kagan's suggestion is that the moderate is going to have to tell a story about subjective (or agent-relative) reasons and values, so that these can generate permissions not to perform acts which promote objective (or agent-neutral) values. The moderate will develop the story by explaining that if the agent chooses to promote the objective value *at the expense* of the subjective value, then the cost of losing the subjective value combined with the moral worth of the objective value will make such an act supererogatory. The idea that a supererogatory act is one where the agent selflessly ignores his own concerns in favour of the greater good is a very common one - think how frequently someone like Mother Teresa is cited as an example of a supererogatory life - but it is not the whole story.

There are examples of supererogation which do not rely on contrasting objective and subjective values. We saw this in Pettit's account. There, the required promotion of an agent-neutral value was limited by the idea of collective responsibility. Promoting more of that same agent-neutral value was optional and supererogatory. So the contrast there was between two objective values; between two agent-neutral values.

In non-consequentialist theories, we need not insist that the values which are promoted by the optional acts are the same or even of the same sort, such as agent-neutral. To illustrate other types of supererogatory act, let us return to Nagel's distinction between agent-neutral and agent-relative values. Of course, non-consequentialists may see no need to make this distinction, but it is a convenient way of drawing out the characteristics of different types of supererogatory act.

If we think that we have a duty to develop our talents, then such a duty might generate agent-relative reasons. Someone who develops their talents in extraordinary circumstances particular to them might be considered to have acted supererogatorily. Evelyn Glennie, the Scottish musician, is a world-class percussionist despite being profoundly deaf. It is not inconceivable that we admire her perseverance and success in moral terms and consider what she has done supererogatory. This is because she has developed her talent more than might have been expected. Now because there is only one value in play, there is no problem about wondering why we call her behaviour supererogatory. It is because there is more of the value, and specifically, because it has gone beyond a minimum required to meet the duty to develop her talent. Here is an example of supererogatory action where both the supererogatory act and the permissible act are generated by agent-relative reasons.

For an example of a supererogatory act generated by subjective reasons which contrasts with a permissible act promoting objective value, we need look no further than Gianna's Sacrifice. Her action to save her child was partial and particular to her; however she also had the future of her other children to consider, arguably an agent-neutral reason on the grounds that every parent should take responsibility for their children's welfare, as on the Pettit account. It would have been permissible of her to cite this as a reason to have a hysterectomy and lose her unborn child and save her



own life. Many women would have taken this option. (Indeed, there has been some controversy within the Catholic Church over Gianna's canonisation, as some consider that it was in fact her *duty* to think of her other children first. This merely illustrates the point that many supererogatory acts are finely balanced and vary according to intuitions).

Although the most commonly cited type of supererogatory act apparently involves a contrast between agent-neutral values and agent-relative values, as in my Jane example, I suggest that this is not the distinction that is necessary for justifying supererogation. As well as the contrast between agent-neutral and agent-relative values, where promoting the agent-neutral value is supererogatory, it is possible to think of examples of supererogatory acts where all other permutations are carried out. Supererogatory acts and their permissible alternatives are sometimes acts of the same type of value, where the supererogatory act represents an extension of the value. This value can be agent-neutral as in the case of Pettit's example of beneficence, where a fair share contribution to others' good is permissible but a greater contribution is supererogatory. Or it can be agent-relative, as in the case of Evelyn Glennie. When supererogatory acts arise in situations where there is a contrast between agent-neutral and agent-relative examples, then the supererogatory act need not necessarily be the one which promotes the agent-neutral value, as in my Jane example. The example of Gianna shows that we sometimes consider the promotion of an agent-relative value in the face of an agent-neutral value to be supererogatory.

Kagan suggested that the moderate must appeal to cost to justify the optional nature of supererogatory acts and that this appeal meant that he had to seek out a separate set of subjective goods to explain how the cost was generated. In this chapter, I have explored the possibility of justifying certain supererogatory acts by relying on a principle other than cost, namely Pettit's appeal to fairness. Because there was no

appeal to cost, Pettit had no need to establish that there were subjective goods, which would generate agent-relative reasons to contrast with the agent-neutral reasons stemming from an objective overall good. However, although Pettit's account of supererogation met all my four characteristics, it did not deal with all types of supererogatory act. It failed to account for acts which did not rely on the agent facing a collective demand, such as Gianna's sacrifice. More worryingly, given that the account was specifically targeted at the overdemandingness of beneficence, it did not cover a special class of beneficent acts, rescue cases.

I also put forward a consequentialist account which made special allowances for a set of goods which Kagan considered, and rejected, as candidates for the subjective set to which the moderate must appeal in order to justify supererogatory acts. I suggested that these goods, love and friendship, were the best candidates for such a set of goods. Frank Jackson argued that we could legitimately display the partiality normally involved in love and friendship whilst still acting according to a consequentialist moral theory. His reasons were based on the epistemological advantages that we had when dealing with those who loved and knew well. However, if some agents decided to step out of the circle of partiality and act towards strangers as if they were those they loved and knew well, then this would result in supererogatory action. Jackson's account enabled us to understand how some agents thought their actions were required in circumstances where others thought they were supererogatory. Like Pettit's account, my interpretation of the supererogatory under Jackson's account did not rely on cost. However, both accounts failed to cover all types of supererogatory act and so must be considered ultimately unsatisfactory.

In the next chapter, I consider another path which the moderate could take to justify supererogatory action without relying on cost.

## Chapter 6 Can imperfect duties account for supererogatory acts?

### ***6.1 A further alternative to the appeal to cost to justify the optional nature of supererogatory acts***

Pettit provided an account of supererogation which avoided an appeal to cost.<sup>1</sup> Instead, it concentrated on the issue of fairness. In cases where the agent had an opportunity to promote a collective value such as beneficence, then he need do no more than his fair share. If he chose to do so, then he acted supererogatorily. The account worked well in that acts which came out as supererogatory met all my characteristics, but it could not be successfully applied to the full complement of supererogatory acts as understood by ordinary morality. Rescue cases, such as Joe's Rescue, were a particular difficulty, as were cases of individual sacrifice for partial concerns such as Gianna's Sacrifice. Annalena's Sainly Life could be accounted for using Pettit's model, but the issue of small favours also seemed problematic.

Jackson's account suggested that we had good epistemological reasons for favouring small groups of people whom we knew well. We had a better chance of doing good, because our understanding of what they needed and what we could do for them was heightened by our proximity. For most of us, that means giving our family and friends greater weight in our moral considerations, but for the saintly few it might mean either choosing to operate morally across a much broader sweep of mankind, in the way that Mother Teresa did, or selectively choosing a small group of people who could really benefit from our help because they are sufficiently disadvantaged, in the manner of Annalena. On my interpretation of his account, these people were acting supererogatorily, the rest of us permissibly.

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<sup>1</sup> An objector might want to suggest that fairness is merely a cover for avoiding acts which cost too much. I am content to say that 'fairness' is a sufficiently basic principle to avoid that challenge.

Both accounts had the benefit of not appealing to cost as a justification for supererogatory acts, but equally they both had the failing of not covering all types of supererogatory acts. I now want to examine another possibility which is open to the moderate which does not depend on the appeal to cost.

The appeal to cost failed partly because the moderate wanted to appeal to cost as a justification for not performing supererogatory acts when the cost was high, as in the case of Joe's Rescue, but the comparison with duties which also cost a great deal rendered the appeal dubious at this level. More damagingly to the case, in some versions of the appeal to cost, when the agent wanted to perform the act, his preference effectively dissolved the cost that might have been incurred, so that acts which were willingly performed ceased to be supererogatory and became required. I argued that this ran counter to our intuitions about supererogatory acts. Finally, the appeal to cost foundered when there was little or no cost involved in the act regardless of agent preference, as in the case of some small favours.

In the case of supererogatory acts such as small favours, it is commonly supposed that I need not do the favour and I need have no other moral act to perform instead. On the other hand, if I were the sort of person who never did anyone a small favour, then I could be open to moral criticism. We 'ought' to do favours, at least occasionally. This is rather different from examples such as Joe's Rescue, where if an agent never performed such an act in his life he would not be open to moral criticism.

Some might say that this distinction is what defines the supererogatory act. If you never have to perform such an act in your life and you can still avoid moral criticism, then those acts and only those are supererogatory. The worry with this characterisation of supererogation is that it leads back to an appeal to cost for the

explanation and justification of supererogatory acts. If acts are supererogatory only if they involve the risk of life and limb, then it seems that we are intuitively appealing to cost to explain why they are not required. I argued in chapter 4 that there are problems with an appeal to cost, even when the costs of performing acts are very high, not least because the issue of agent preference could play an important part in making the cost disappear even in heroic acts. I shall leave aside for now the question of whether some kind of justification apart from cost could be made for supererogatory acts purely for the class which involve a high risk to the agent's life. I shall assume, along with Urmson and many others, that there are small acts of supererogation. My task is to try to find a common ground of justification for all acts of supererogation including small favours and the acts of saints and heroes, but without appeal to cost.

A possible way of doing this is through an account of imperfect duties. In this chapter, I examine whether Thomas Hill's interpretation of Kantian imperfect duties yields a successful account of supererogation. It requires more to be said about the character of the agent, and I discuss how an assessment of the agent's character can be combined with an assessment of the agent's acts. A development of an account of suberogation by Triantosky leads me to consider that it is possible to arrive at independent assessments of the agent's motivational structure and his acts. This will prove useful in my proposal for dealing with the two problems of requirement and rationality in the context of supererogation.

## ***6.2 How imperfect duties could give an account of supererogation***

Although one distinction between the two types of acts can be made in terms of cost, a small favour is also different from Joe's Rescue in another respect. Joe's Rescue is a one-off act. With a small favour, the moral judge might want to look at the agent's



'track record' of moral performance before pronouncing the favour supererogatory. A category of act, the Kantian inspired 'imperfect duty', seems to fit well with these sorts of act. If we can understand how imperfect duties work, we might be able to use this concept in justifying supererogatory acts of the small favour kind and then investigate whether it could be used for the other types of supererogatory act.

The suggestion that the theory of imperfect duties can help provide an interpretation of supererogatory acts has been proposed by Thomas Hill, who considers that Kant's moral theory would be enriched by a capability to embrace supererogation in some form.<sup>2</sup> His view has been opposed by Marcia Baron, who argues that the recognition of supererogation as a separate classification of act goes against the spirit of Kant's moral theory.<sup>3</sup> I first outline Hill's suggestion to see whether it can be adapted for more general use rather than as a mere expansion of Kantian views.

Simply put, the distinction between perfect and imperfect duties is that perfect duties, such as the duty to keep a promise, must be fulfilled on each occasion that they arise. Imperfect duties, such as the duty of beneficence, leave the agent with more room for discretion as to when to act. In Kantian terms, when performing imperfect duties the agent adopts a general maxim to promote certain ends. He need not perform a beneficent act on every occasion that he has the opportunity to do so. In Kantian theory, the latitude afforded to the performance of imperfect duties is restricted by perfect duties. One must not do anything as part of an imperfect duty that is proscribed by a perfect duty. More specifically, the maxim to which the imperfect duty relates must fall under the universal law and must therefore not conflict with a perfect duty. Thus Hill gives a principle of imperfect duty as:

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<sup>2</sup> Hill (1971)

<sup>3</sup> Baron (1987)

'One ought to do (or avoid) x sometimes, to some extent, but never when or to a degree contrary to principles of perfect duty'.<sup>4</sup>

So although I ought to perform favours such as taking in my neighbour's parcels, I must not do this if it conflicts with a duty. I must not stay at home simply in order to take in the parcels if it means that I break my promise to meet my friend for lunch.

Those of us looking for a justification of supererogatory acts might wonder whether we can follow Kant even this short way down the path. According to Frances Kamm, we may indeed violate a duty to perform a supererogatory act (but not to pursue a personal goal).<sup>5</sup> We may take someone's car without permission to effect a great rescue. According to Kant we may not do this.<sup>6</sup>

Even though the maxim underlying the imperfect duty might require the promotion of a very general and open-ended value such as beneficence, the agent must still demonstrate that he has adopted the maxim through the performance of acts which conform to the maxim. Hill says:

'Anyone..who sincerely adopts such a principle will act accordingly, at least sometimes, if he gets a chance. For example, if a person with the usual abilities and

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<sup>4</sup> Hill (1971) p.57

<sup>5</sup> Kamm (1985)

<sup>6</sup> Kamm's point gives us a new and useful way of distinguishing between a small favour and Joe's Rescue which reinforces the point that the optional nature of supererogatory acts is not to be justified on the basis of cost. We might consider that I cannot take someone's car without permission to do a small favour, but I could to perform Joe's Rescue. The distinction is based not on cost incurred to the agent by performing the act but by the amount of moral worth in the act relative to the duty that is violated. Of course, we have to be careful to explain that the amount of moral worth of the supererogatory act is not determined by the cost borne by the agent. The moral worth of Joe's Rescue comes about because of the lives saved, not because it costs Joe a great deal to achieve it. If we like, we can assume that it does not cost him very much to do. Perhaps, as in the case of Gianna, he was willing to do it to the extent that he did not experience any cost.

opportunities did nothing to promote the happiness of others, he would thereby show that he did not really adopt a maxim of beneficence.<sup>7</sup>

This reinforces the intuition that, although we think taking in my neighbour's parcels is supererogatory, we should still do some acts of this sort, otherwise we would be open to criticism.

Hill raises the suggestion that if Kant is interpreted rigorously, then it is not the case that we have a choice as to whether to do my neighbour a favour if the alternative act is one of moral indifference. There the favour would be obligatory. The choice only applies if the two possible acts both relate to an imperfect duty.

So on the Kantian view of what counts as an imperfect duty in the Weekend Example, we can choose whether to work for charity or to write the philosophy article, because the charity work falls under the imperfect duty of beneficence and writing the philosophy article falls under the imperfect duty of developing one's talents. However, we must do one of these acts. On this interpretation of imperfect duties, we are now in the position that I discussed in chapter 3, when considering two acts which both had maximal value. There, as here in this example of imperfect duties, each act is optional in the sense that there is another permissible alternative which I may do instead. In the case of the two maximal acts, the Betterness characteristic could not be applied, because both acts were maximal and betterness was determined by the amount of good promoted by each act. So performing one of the two maximum acts would never be supererogatory on my account, because although it formally met the Optionality characteristic, it failed to meet the Betterness characteristic.

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<sup>7</sup> Hill (1971) p.58 from Kant's *Doctrine of Virtue*

In the case of two imperfect duties, one of which must be done, we do not have the same problem with the Betterness characteristic, because betterness is not necessarily determined by the degree of good promoted by the act. So it might be possible to develop an account of supererogation even if we are forced to adopt Kant's rigorous interpretation of imperfect duties.

However, another interpretation suggests that what Kant had in mind was not the rigour of always doing a duty, but that the adoption of indefinite maxims had to be such that adopting and acting on one indefinite maxim did not close the way to adopting and acting on another indefinite maxim. It is not sufficient that an agent adopts the indefinite maxim to develop his talents if acting on this maxim always means that he never acts on the indefinite maxim of beneficence, for example.

Hill claims further evidence in Kant for the suggestion that we should allow for 'free time' in morality, in other words, there should be space to perform the morally indifferent act and perhaps laze around the house a bit (however an unKantian feel that has to it!). Kant disassociates himself from the "fantastically virtuous man", "who admits nothing morally indifferent ..... and strews all his steps with duties, as with man-traps" '.<sup>8</sup>

Yet on another occasion an impartialist view, usually espoused by consequentialists, that the agent's interests should count no more or less than anyone else's, finds a sympathetic echo in Kant where he suggests:

'.. it is rather that legislative reason, which includes the whole species (and so myself with it) in its Idea of humanity as such ..., includes me, when it gives universal law, in the duty of benevolence, according to the principle that I am equal with all others

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<sup>8</sup> Hill (1971) p.59 from Kant's *Doctrine of Virtue*

beside me, and permits you to be benevolent to yourself under the condition of your being benevolent to every other man as well'.<sup>9</sup>

On this reading, lazing around the house could be interpreted as a manifestation of the imperfect duty of benevolence towards myself as agent. We could choose between doing a small favour (and thereby acting in accordance with the imperfect duty of beneficence towards others) and lazing around the house (part of the imperfect duty of beneficence towards me). But would either of these count as better than another morally permissible act? It looks as though the Betterness characteristic could not be fulfilled. If there is another morally permissible act, such as a morally indifferent act, then the problem for the moderate is that he wants to consider only the small favour as supererogatory; he certainly does not want to classify lazing around the house thus. I return to this point below, but I accept Hill's reading of Kant that he intended there to be a zone of moral indifference.

Can imperfect duties be sufficiently distinguished from perfect duties? Some theorists have a difficulty in marking a clear distinction between the two because perfect duties can apparently be turned into imperfect duties. Using an example from Roderick Chisholm, if I owe you ten dollars then it is my (perfect) duty to repay you. The fact that I may fulfil this duty by paying in cash, in any combination of notes or coin, by cheque or that I may give you the notes in my left or right hand suggests that even a perfect duty may be indeterminate in the same way as an imperfect duty and so the distinction is a false one. Hill responds correctly in my view to this objection by noting that there are two distinct types of latitude in play here, one which relates to perfect duties and the other which relates to imperfect duties.

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<sup>9</sup> *ibid.*



The first latitude is a latitude to fulfil a requirement in a number of different ways, or as Hill puts it 'freedom to choose various ways of satisfying a principle in a situation once we decide that the principle applies'.<sup>10</sup> This applies to perfect duties such as the debt repayment example. The second latitude is the latitude characteristic of imperfect duties and is:

'freedom to choose to do x or not on a given occasion, as one pleases, even though one knows that x is the sort of act that falls under the principle, provided that one is already to perform acts of that sort on some other occasions'.<sup>11</sup>

This is the type of latitude that Hill has in mind to develop an account of supererogation in Kantian theory using the concept of imperfect duties.

### **6.3 Hill's definition of supererogation**

The relationship between supererogation and imperfect duties is not so simple that one can say that whenever an agent performs an act in accordance with an imperfect duty he has acted supererogatorily. As Hill points out, on Kant's scheme sometimes a beneficent act will be obligatory if the only alternatives on that occasion are contrary to perfect duty or if it is the last opportunity the agent has to fulfil his imperfect duty which he has neglected on every opportunity to date. Hill thinks he can find a place for supererogatory acts within Kant's theory in a sub-class of acts which fulfil principles of imperfect duty. Hill's definition of a supererogatory act is an act which:

- a) is of a sort commended by a principle of (wider) imperfect duty
- b) is motivated by a sense of duty (or, perhaps, respect for moral reasons)
- c) is neither forbidden nor required by another, more stringent duty

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<sup>10</sup> Hill (1971) p.61

<sup>11</sup> *ibid.* p.61

- d) is in a context where no alternative is required by more stringent duty and there is at least one alternative that is neither forbidden by more stringent duty nor commended by other principles of wide duty
- e) is done by an agent who has adopted the relevant principle of wider imperfect duty and has often and continually acted on that principle.<sup>12</sup>

Hill's definition is set up with the purpose of fitting it into Kant's philosophy, not for more general purposes of defining supererogation. Nonetheless, it directs us to some troublesome points concerning the use of imperfect duties in a general theory of supererogation.

Firstly a). Defining which duties are imperfect as opposed to perfect is important. Why should beneficence and developing one's talents be imperfect duties? Isn't defining them thus merely an implicit acceptance that they are open-ended duties? If so, then the perfect/imperfect duty distinction is a formal way of recognising the problem of the overdemandingness of beneficence rather than a solution. I only have to do good to others on certain, but not all, occasions precisely because if a perfect duty were in force and I had to do good on every occasion then morality would be impossibly demanding.

However, in response we can see that it is possible to set a minimum standard for performance of perfect duties. Can we set a minimum standard for performance of imperfect duties? If we could, it would tie in with our intuitions on supererogation. Someone who does good for others on a reasonably regular basis meets moral minimum standards, but an agent who is *always* doing good goes beyond the minimum is acting supererogatorily. The difficulty is to find a formal way to express this minimum for imperfect duties. We can't set the minimum by stipulating a number of occasions when the agent is required to be beneficent. It is not the case that we can

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<sup>12</sup> *ibid.* p.71

do a huge amount of good work for others in the early part of our life and then do nothing thereafter. For example, an idealistic student who works in difficult circumstances in the developing world in his year off might consider that he has done enough and he is required to do no more in his later years when career and family demands become more pressing. This is clearly not the spirit of the Kantian imperfect duty.

Turning to b). Supererogatory acts should not be dutiful acts, which Hill concedes, but although b) appears to contradict this, the condition is specially designed to fit in with Kant's view that an act has no moral worth unless motivated by duty. Hill does modify the Kantianism by suggesting that acting from moral reasons would be good enough. In ordinary morality, we might consider some acts supererogatory that are not motivated by moral reasons provided the outcome were significant, such as saving lives.<sup>13</sup>

Condition c) is accepted but d) poses a difficulty. If a supererogatory act can be the performance of an act fulfilling an imperfect duty where no stringency rules are infringed and there is at least one alternative which does not involve the performance of a perfect duty *or imperfect duty*, then under the Betterness characteristic writing my philosophy article in the Weekend Example becomes supererogatory, as although there is arguably a 'better' act that can be done, namely working for charity, there is an alternative non-duty to both working for charity and writing philosophy, to laze around the house. If I write philosophy, then I fulfil an imperfect duty to develop my talents which is better than lazing around the house. On Hill's definition it is

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<sup>13</sup> Statman (1996) p. 218 points out that some good moral acts are often performed by people who are not especially 'good' people or who would even understand or consider that they are acting from moral reasons when they perform their courageous act. As Arthur (2004) p.88 comments on one recipient of the Victoria Cross; 'it seemed that what is called "fighting spirit" and earns VC honours in the face of the enemy can make an "unruly soldier" in more peaceful times'.

supererogatory, which is a result that does not fit with ordinary morality intuitions. There are two possible responses, apart from ignoring intuitions and letting the position stand:

Firstly, we could claim that developing our talents is never a duty, not even an imperfect one. Perhaps it falls outside morality or is, as Portmore suggested, really subservient to a duty of serving others in that where we do consider developing talents a duty or at least a moral issue, the sort of talents that we consider are those which might have some benefit to others. On this reading, I may be permitted either to write my philosophy or laze around the house rather than work for charity, since both are morally permissible acts (in fact, morally indifferent acts if we consider there is no moral value in writing philosophy). If I do work for charity then I have performed a supererogatory act. More realistically, we might consider that developing our talents has varying degrees of moral worth according to the talent and the circumstances, although to regard developing our talents as supererogatory seems to require that the moral worth of the talent be high and the circumstances special.

One possible example of this is where the agent has developed a talent to a high degree in very difficult circumstances as in my example of Evelyn Glennie, who has become a world class musician despite her deafness. The demanding consequentialist might require her to develop her talents to the full, whatever her difficulties, but ordinary morality would balk at this and accord her some moral acclaim for her perseverance and success. So we can find some examples of developing our talents which could be considered supererogatory, but let us assume that the Weekend Example is not one and therefore the problem remains.

Another response is to say that if there is more than one imperfect duty that can be done, then we should do at least one of them, but that the label 'supererogatory' will

only be accorded to the act relating to the imperfect duty which has the greater content or moral worth. In the Weekend Example, this means that I must either work for charity or write my philosophy and that lazing around the house is not permitted. The ordinary morality position would be to regard working for charity as having greater moral worth, although to consider the agent justified in writing his philosophy article. This is assessed on the basis of results in a consequentialist manner. It is assumed in ordinary morality that more overall good will come of my working for charity than writing my philosophy (unless I am a truly great philosopher!)

Neither of these responses is in accordance with a Kantian interpretation. Firstly, Kant regards developing our talents as an imperfect duty. Secondly, if a Kantian agent has to choose between acting in accordance with two different imperfect duties, there is no suggestion that the agent should choose on the basis of results of the action. We were driven to find a response because a morally indifferent act, lazing around the house, was an alternative permissible act, making *any* act in accordance with an imperfect duty supererogatory. Hill's definition does not appear to deal with the point that if there is the opportunity to act in accordance with more than one imperfect duty (and there is always the possibility of performing a morally indifferent act), then whichever act is selected will turn out on his definition to be supererogatory.

Hill's condition e) shifts the emphasis away from the feature of the single act to a pattern of acts. As my discussion of imperfect duties has indicated there has to be some way of assessing the agent's performance of the imperfect duty which is not purely reliant on a single instance of carrying out the duty. Nor does the fact that an agent might perform a certain number of acts which carry out the duty seem to be enough. On Hill's Kantian view, and in ordinary morality, the agent whose behaviour is supererogatory with regard to the imperfect duty of beneficence is someone who often (but not necessarily always) helps others to a high degree. Measuring 'often' and



'high degree' is not a simple matter - it is not the case that the agent can discharge his duty by a short and intensive burst of beneficent acts in a few months or years, as I noted above. Rather it does seem that, in the Kantian spirit, the agent must have taken to heart the principle of beneficence and apply it in appropriate circumstances. I say more about this when discussing the agent's character at 6.5 below.

#### ***6.4 Can an imperfect duties account of supererogation cover heroic acts as well as small favours?***

Despite the problems noted above, imperfect duties seem to be an attractive solution to the problem of explaining supererogatory acts such as small favours, because they express the type of latitude which ordinary morality accords these acts. Could heroic acts also be covered by the concept of imperfect duties? Counted as a form of beneficent act, there is no reason why they could not be. We might be worried that the inclusion of heroic acts in this category would mean that we all ought to do a heroic act at least once in our lives, and I have claimed that this is not an intuition that we have about such acts, although it does apply to small favours and acts of generosity.

Alternatively, including heroic acts as a generally beneficent act on a par with small favours might just mean that the agent can choose which sort of beneficent act he does. The temptation might be there to think that our hero can go around being pretty mean-spirited for a good number of years, since he has a large heroic act 'under his belt'.<sup>14</sup> This certainly does not meet our intuitions about correct moral behaviour, let alone supererogation.

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<sup>14</sup> There is a suggestion that doing a really big heroic deed can mark an agent's record permanently. Until 1920, holders of the Victoria Cross could have their award forfeited for subsequent discreditable acts. However, after an appeal from a widow (of a bigamist VC holder!) King George V

If we allow heroic and saintly acts into the category of imperfect duty then beneficence seems to have expanded to have captured every act that does good for others which is not demanded by a perfect duty. What counts as an imperfect duty is crucial to the success of using the structure to explain supererogation, and merely stipulating certain duties such as beneficence and devotion to talents as imperfect because they are open-ended seems to beg the question as to why they should be open-ended at all. It might be suggested that small supererogatory acts are open-ended because if we had to do them all it would make morality too intrusive in our lives, and that the heroic acts are open-ended to give us a chance to duck out of the really dangerous ones; in other words they might cost us too much. All of which is saying that the imperfect structure solves the problem of supererogation by merely admitting the two ways in which morality can be too demanding, and it gives the agent the two types of latitude he needs to avoid the overdemandingness. So far, although the idea looks appealing, imperfect duties are not yet a satisfactory method of providing a justification of the optional nature of supererogation within a moral theory because we cannot say what sort of acts should be included and what constitutes a minimum performance.

I now consider my interpretation of Hill's condition e) in his definition of supererogation. In that condition, Hill claims that an act is only supererogatory if it is done by an agent who has adopted the principle of imperfect duty and has acted on

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revoked this and declared that 'even were a VC to be sentenced to be hanged for murder, he should be allowed to wear the VC on the scaffold'. Arthur (2004) p.xiii. Although holding the VC did not right subsequent wrongs, it was considered a sufficiently great moral deed for it to be remembered as a permanent mark on a man's moral record, unerasable even by the greatest wrong. On the more negative side, Baron (1987) complains that superficially admirable big supererogatory deeds can lead to a style of 'yuppie ethics'; for example giving a secretary a big present, patting oneself on the back for such generosity, yet ignoring the more basic moral need that the secretary should really be paid and valued more.

that principle in the past. In other words, an act is only supererogatory if it is done by someone who has done supererogatory acts before! I interpret that to mean that there must be something special about the agent who performs a supererogatory act, and I now examine whether it is the character of the agent which is at issue.

### **6.5 *The character of the agent***

Marcia Baron's criticism of Hill's account of supererogation mainly focuses on what she sees as a misinterpretation of Kant, but it is her comments on supererogation that are relevant here.<sup>15</sup> She rejects Hill's claim that imperfect duties can provide an opportunity in Kant's theory because the emphasis in imperfect duties ought not to be on the point that the agent need not perform acts of this sort on every occasion they arise, as Hill suggests. Instead, the emphasis should be on the more demanding idea that we can never say that we have done all we can to help people. Baron admits that, even if we dismiss imperfect duties as a structure capable of explaining supererogatory acts, we might still be able to hold on to heroic acts as a diminished but distinct category of supererogatory acts. Here, as I have suggested, the temptation is to fall back on the explanation for the supererogatory status of these acts that they cost the agent too much. Baron raises the same points of criticism as I have done in that there are many duties which cost a great deal and yet we are not allowed to escape them. Baron refers to Pybus who suggests the following in regard to heroic acts:

'We should not ask whether the action of throwing oneself on a grenade is beyond the call of duty, but whether actions of a certain sort, viz., very brave ones, are beyond the call of duty. And they are not. Clearly we cannot slide out of doing our duty by saying that we are not brave enough. Sometimes we may be excused for a loss of

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<sup>15</sup> Baron (1987)

nerve, but we cannot remain cowards all our lives, and use that as an acceptable excuse for fulfilling only the basic requirements of morality.'<sup>16</sup>

Here Pybus and Baron distinguish heroic acts from more general acts of beneficence because they involve the virtue of courage. I agree that this is a distinction and is sufficient to prevent heroic acts from being thrown in with the duty of beneficence that may be explained as supererogatory through the imperfect duty structure. Pybus' remark that we cannot remain cowards all our lives suggests that she thinks the intuition that we should never be required to do a heroic act is misplaced. It also introduces the idea that the agent's character might be an important feature of even heroic supererogatory acts as well as a necessary feature of the judgement made about the smaller supererogatory acts. Baron picks up the point about character and elaborates with this example:

Jill and Maria have both adopted a maxim of beneficence. They really care about the welfare of others and take it very seriously. They have no desire to impress others by their good actions. In other words, we are to assume that both their motivational structures properly reflect the maxim of beneficence. Baron describes the two cases thus:

'Jill helps others often, but she does not make the sacrifices of time and energy that Maria makes. Maria volunteers on emergency hotlines. Jill does not turn her back on needy people and is sensitive to the needs of others, but she does not go out of her way to involve herself in the activities of the sort that Maria takes part in. In addition, Jill tends not to take notice of others' needs except when she is personally acquainted with the people in question.'<sup>17</sup>

In ordinary morality, Maria would normally thought to be behaving supererogatorily and Jill doing her duty. But Baron suggests this is problematic if we think in terms of

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<sup>16</sup> Pybus (1982) p.198

<sup>17</sup> Baron (1987) p.258

act classification. Which of Maria's acts will count as supererogatory? (We can suppose that some of her actions will be exactly the same as Jill's). Rather we should be giving special recognition to Maria's character, says Baron. This example spells out the problems of the imperfect duty raised above, but Baron's solution has its own problems which she acknowledges. What does it mean to give recognition to someone's character if not through an analysis of their acts? Baron suggests that before we describe someone as having a specially virtuous character we look not only at their acts which we might consider to be supererogatory but also at their ordinary actions as well so that we build up a picture of the agent's motives, aims and values.

Combining this assessment of character together with the concept of imperfect duties might explain the structure of at least some supererogatory acts. Hill's condition e), in which a supererogatory act 'is done by an agent who has adopted the relevant principle of wider imperfect duty and has often and continually acted on that principle', could be modified so that a supererogatory act 'is done by an agent whose motives, aims and values are those of a virtuous person'. This would be in accord with ordinary morality intuitions about small supererogatory acts. I judge the agent who does a small favour to be supererogatory only if he has the right motivational structure and attitude to doing good for others. If I know that he is the kind of person who does favours for others only to ask for other rather difficult favours in return, I am less inclined to view his act as even morally acceptable let alone supererogatory.

The rider about the virtuous character does not sit well with the view of heroic acts, however. I have already suggested that we may consider some acts supererogatory when we know nothing of the agent's character; they are supererogatory in virtue of the great outcome that has been achieved. Baron concedes this, although she says such acts are rare. This points up an important difference between heroic and saintly supererogatory acts. Heroic acts include a set of acts which are responses to special



situations and require no knowledge of the agent's character and motives to be classified as supererogatory.<sup>18</sup> Sainly acts are those where the agent has taken a decision to live in a certain way as a result of a particular set of character dispositions and motives.

Baron also correctly points out that supporters of supererogation differ as to whether they demand that an altruistic motive be present before the act can be classified as supererogatory or not.<sup>19</sup> For example, Heyd claims the intent must be altruistic but the motive can be to gain fame.<sup>20</sup> So if Joe is a self-seeking publicist and rescues the children from the burning building, his act is supererogatory according to Heyd provided he intended to save them, albeit that his motive was one of self-aggrandisement. This distinction in definition might seem a small one, and stipulative at that, until we come to examine it in the context of supererogatory acts as imperfect duties tied to the agent's character. We either side with Baron and decide that small supererogatory acts can be written off as duties albeit imperfect ones and with a particular description of the agent's character as an additional condition, or we decide that the imperfect duty model with the extra character condition succeeds in justifying a separate classification for a set of supererogatory acts. If we demand a certain character condition before heroic acts are considered supererogatory then we might be able to extend the imperfect duty/character model to embrace them, thus avoiding the need for two types of justification. If we insist on the possibility of the

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<sup>18</sup> Usually the award of the VC reflected this point. However, in an exceptional case a VC was awarded to Edward Mannock, not for the usual single deed, or group of specified deeds, but for his entire service as a pilot in World War 1. He was described as being an 'outstanding example of fearless courage, remarkable skill, devotion to duty and self-sacrifice which has never been surpassed.' However, it was only one aspect of his character that was in point here for Mannock was certainly no saint, nursing an obsessive hatred of Germans and taking delight in his kills (although he showed considerable devotion to his men). It was his consistent bravery, rather than any one incident or a saintly character, which won him his award. Arthur (2004) p.360

<sup>19</sup> Michael Clark (1978) pp.23 and 29 is an example of one who does.

<sup>20</sup> Heyd (1982) p. 115 and p.137

heroic act without any character condition, then we are back to the uncomfortable position of having to provide two different justifications for their optionality.

There is still something troubling about the imperfect duty/character account, however, which might cause us to reject even this modified account. Consider Jill and Maria again. We will consider some people virtuous even if we cannot point to any supererogatory acts, Baron suggests, and I think she is right. There is nothing to say that Jill is not a virtuous person. In fact, that Jill has taken to heart the good of others and makes reasonable if not all exhaustive efforts to help those in need would certainly seem to put her in the category of the virtuous. Rather, the example suggests that Maria comes closer to the ideal of the *fully* virtuous person.

Now, however, it looks as though we have exchanged a scale of goodness of acts for a scale of virtue of character and find ourselves in the same difficulty as far as supererogation is concerned. Where on the scale do we decide that someone is a person whose level of virtue tips her acts of imperfect duty into the category of the supererogatory? This might not be insuperable. It might be sufficient to know that there is a point on this scale, and that we might be able to say roughly where it is even if we cannot spell out how we do this. How though is our position improved over that of the theorist who thinks we can judge that an act is supererogatory by how good it is (possibly with some combination of a cost factor) even if we cannot explain the full factors and relationships behind that judgement?

### **6.6 Are imperfect duties a successful way of describing supererogatory acts?**

Hill's definition of supererogation using imperfect duties raised three problems. Firstly, Hill's condition d) appeared to allow any imperfect duty performed instead of

a morally indifferent act to be supererogatory. This might broaden the category of the supererogatory beyond its normal usage in ordinary morality. Secondly, condition e) of Hill's definition suggested that we would need to find something about the agent's character or motivational structure to add to the performance of the imperfect duty before it became supererogatory. Baron's description of how this might be done showed that, on the face of it, working out what constituted a supererogatory character met the same problems as trying to decide what the minimum performance for a duty might be. Finally, if we take the imperfect duty/character route for justifying supererogatory acts we have closed off a justification for the heroic act for two reasons. Firstly, there are some such acts where the character of the agent is not known to us and is irrelevant to the status of the act. Secondly, imperfect duties imply that we ought to do such an act at some point in our lives and this is not an intuition that is commonly shared about heroic acts (Pybus' view notwithstanding).<sup>21</sup>

There is another category of moral act, related to imperfect duties, which develops the idea of the relationship between the deontic status of the act and the character of the agent in a way which is useful to an understanding of supererogation. This is the suberogatory act.

### ***6.7 Suberogation and an assessment of the agent's motivational structure***

Theorists such as Chisholm have suggested that a category of act, the suberogatory, is closely related to the idea of the supererogatory.<sup>22</sup> A suberogatory act, as the

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<sup>21</sup> We might think that we can avoid this problem if we consider that we have done *any* act which fulfils an imperfect duty. So as long as we have done the right amount of small favours, we are still not called on to perform heroic acts. However, as noted above, establishing what constitutes the minimum is difficult.

<sup>22</sup> Chisholm (1963)

etymology suggests, is one which falls below the standard of the required act, but it is not a forbidden act. It is permissible, despite its negative moral worth. To frame it in the structure of imperfect duties, if a supererogatory act is one which an agent ought to do sometimes but is not obliged to on every occasion, then a suberogatory act is one which an agent ought not to do all the time, but may do on some occasions.

Above, I suggested that heroic or saintly acts could not fit into the structure of imperfect duties, because the sort of act that fulfilled an imperfect duty was one that an agent knew that he should perform at least on some occasions. According to our intuitions, heroic and saintly acts are those which the agent thinks he never has to perform in his lifetime. Suberogatory acts also mirror imperfect duties in that, although we may permissibly perform acts of small negative worth on occasion, we can never perform a very bad act.<sup>23</sup> Once the act attains a certain level of negative worth, I suggest that it will fall out of the permissible category and into the forbidden. Thus, there is evaluative as well as deontic similarity between supererogatory and suberogatory acts. The concept of suberogation is useful to an understanding of supererogation because it is easier to see how an evaluation of the agent's act can be separated from his character in the shape of his motivational structure.

Firstly, here is an example of suberogatory action.<sup>24</sup> Someone queuing for a bus seat stands ahead of a couple who obviously want to sit together. When she gets onto the bus, she can choose between sitting in a single seat or in the one remaining double. She sits in the double. She is perfectly entitled to do so, since she is ahead in the queue of the couple. And yet there seems to be something not quite right about her behaviour. It is not exactly wrong. We can imagine that if the queuer were challenged,

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<sup>23</sup> Although Chisholm (1963) tries to make the case for acts which are very bad, but not wrong to do, I conclude that he is unsuccessful in this.

<sup>24</sup> Adapted from an example by Julia Driver (1992)

she would respond with something like 'I'm within my rights - I was first in the queue'. It lacks something morally desirable, nonetheless.<sup>25</sup>

Suberogatory and supererogatory acts are structurally similar. Any explanation of suberogatory action might be expected to help with an understanding of supererogatory acts. Trianosky has developed an explanation of suberogation.<sup>26</sup> He begins with two examples of such acts. Firstly, refusing to forgive a debt even though the lender knows the debtor needs the money much more than he does. Secondly, the house seller who sells his house to the highest bidder rather than the people who need it most, when their bid is only a few thousand dollars less. Trianosky says:

'Our shared moral convictions indicate that these are surely permissible choices. In response to criticism, I might correctly point out, 'I had every right to do what I did'.....What is objectionable in the two cases... is that the agent expresses a narrowly legalistic attitude toward morality by asserting his rights in such cases. It is not that what he does is wrong, considered independently of its motive; for our common-sense principles of moral obligation are narrow and legalistic here. Nevertheless, the agent reveals a genuinely vicious motivation in his coldly calculated insistence on what is rightfully his'.<sup>27</sup>

There are two points to be drawn from these examples. The first is that the judgement of the act is separated clearly from the judgement of the agent's character. Although the agent is permitted to do the suberogatory act, the onlooker makes a negative judgement about the agent when he does so. In discussing imperfect duties, and in particular the examples of Jill and Maria, Marcia Baron considered it difficult to separate the judgement of character from the act. The two for her were inextricably

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<sup>25</sup> In this example, if she does give up her seat, we might consider that she has done more than she has to. If the queuer does not give up her place, her act is permissible but falls short of some standard which allows us to say that there is some negative moral worth in her act. It is suberogatory. On the other hand, if she does give up her seat, which she is not required to do, then she has acted supererogatorily. It appears that the agent faces a sort of dilemma; she must act either suberogatorily or supererogatorily - there is no morally neutral ground to fall back on.

<sup>26</sup> Trianosky (1986)

<sup>27</sup> Trianosky (1986) pp. 462-463



linked. Trianosky is supporting the idea that deontic judgements and judgements about an agent's character are independent of each other. They have a 'looseness of fit'. He manages to make the distinction that Baron failed to, by distinguishing between the accepted principles of morality and the motivational structure of the agent.

Trianosky claims that there are two types of assessment at work when we assess an act which is suberogatory. The first is a standard of vice which assesses the agent's motivational structure along a continuum. At some point, the standard of vice will indicate that the agent's shortcomings become so great as to become genuine defects, vicious motivational flaws. The second assessment is according to the principles of wrongdoing. It is a deontic assessment, in other words. In the case of a suberogatory act, the principles of wrongdoing say that the act is not wrong to do. It is not wrong to stand on your rights in the examples I have given above. Trianosky's suggestion is that the standards of vice may vary in degree, even if the principles of wrongdoing remain fixed. This distinction is useful when considering supererogatory acts in two respects.

Firstly, it demonstrates that when an agent fails to do a supererogatory act such as a heroic or saintly act - one which we have considered he need never do - his motivational structure may demonstrate some shortcomings. It may in Trianosky's terms fall short of the motivational structure of the fully virtuous person, but it may display no actual vicious flaws either. Thus it is easy to understand the optional nature of these types of acts. If I fail to be a hero or a saint, I can acknowledge my shortcomings, without berating myself for moral failure. Nor would I expect others to do so.

Secondly, in the case of 'standing on one's rights', we can say that the motivational structure of the agent was vicious, in Trianosky's terminology. In the case both of failure to perform the heroic act and 'standing on one's rights', the agent acted morally permissibly. In the case of the failure to perform the heroic and saintly act, however, no further criticism of the agent is in order. In the case of the house seller, and others like it, the onlooker is at liberty to criticise the agent's motivational structure as being below the standard of vice which is acceptable. Trianosky suggests that the assessment of an act according to the principles of wrongdoing is a feature of public morality, whereas the assessment of an agent's motivational structure is related to private morality. Thus, although we might think that there is some shortcoming or even viciousness in an agent's motivational structure, this does not permit us as an onlooker to push the agent's act from being permissible into the territory of wrongdoing.

The shortcomings in the agent's motivational structure will thus range from 'merely' shortcomings that do not merit criticism to varying degrees of 'viciousness', as Trianosky terms it. Mere shortcomings might appear in the failure to perform a heroic or saintly act, whereas shortcomings of a more vicious type would be made manifest in the case of an agent who stands on his rights, as seen in the examples of suberogatory behaviour.

Trianosky's discussion is concerned with the failure to perform a supererogatory act, but it could be translated into an account of the performance of a supererogatory act, by using the concepts of principles of rightdoing and standards of virtue. Would this produce a strong enough story on which to build an account of supererogation? It might seem that we have merely formalised the same familiar problems associated with supererogation yet again. If I fail to do a heroic or saintly supererogatory act, that is deemed acceptable because no one expects me to have the motivational

structure of the hero or the saint. If I fail to do a smaller supererogatory act, then I can be criticised, because failure to do something I could easily do shows that there is something wrong with my motivational structure. If we can find a way of separating deontic judgement from a type of evaluative judgement then an account of supererogation will be made easier. Trianosky's account of wrongdoing and his separation of private and public morality does this, but there remains the worry that there is merely a description of the processes of ordinary morality, rather than a justification of them. I leave this worry to one side until the next chapter and proceed on the assumption that we can make this sort of distinction.

In the next chapter, I consider my proposal for an account of supererogatory acts which deals with the two problems of requirement and rationality.

## **Chapter 7 The dual aspect and indeterminacy of supererogation**

### **7.1 A solution to the two problems of supererogation - the pressure of requirement and rationality**

The two problems of supererogation which I have described are these:

#### ***1. The Problem of Requirement: If an act is good, why isn't it required?***

The first problem concerns the Optionality characteristic of the supererogatory act. If an act is good, why isn't it required? How can the optional nature of the act be justified? Appealing to cost to limit the extent of moral requirement will not succeed, as I argued in Chapter 4. I discussed alternatives to appealing to cost in Chapter 5.

Firstly, Pettit suggested we need only do our fair share of the good - any more is supererogatory. This is unsatisfactory in that it only works for certain types of supererogatory act, namely where the supererogation is the result of doing more of the same value that is required by duty. Even here, it met a serious obstacle in the shape of rescue cases.

Secondly, Jackson argued that we are permitted to favour small groups of people whom we know well, because we have better knowledge of their wants and needs. If he is right, then this establishes the moral legitimacy of a set of partial goods which can be contrasted with the normal impartial demands of morality. Supererogation would arise when agents did not overweight the partial demands as they would be permitted to do, but concentrated instead on the impartial demands. However, my development of Jackson's subjective consequentialism as an account of supererogation met the same fate as Pettit's, in that it could not deal with all types of supererogatory

act. Not all supererogation arises as a contrast between partial and impartial demands, with the impartial demands being supererogatory.

In Chapter 6, I explored the possibility that the concept of imperfect duties could yield an answer to the problem of requirement, by establishing a particular kind of latitude in action. However, it proved difficult to establish what would be supererogatory on that basis, and even adding a rider about character of the agent did not help. A development of the concept of imperfect duties, the category of the suberogatory, allowed me to explore a useful suggestion by Trianosky that there may be two judgements for every single act: one concerning the motivational structure of the agent and the other concerning the deontic status of the act. I develop that theme further below.

***2. The Problem of Rationality: If there is a good reason not to perform the supererogatory act, isn't it irrational to do it?***

If a supererogatory act is optional, it suggests that there must be a good reason *not* to perform the supererogatory act, so isn't it irrational to perform it? Equally, there must be a good reason to perform the supererogatory act, therefore the alternative permissible act may also be described as irrational. I have suggested that both results are counter-intuitive. In Chapter 3, I showed that although a maximising theory could account for supererogation, it could do so only at the expense of supererogatory acts' being described as irrational; an unacceptable result. The problem of rationality means that simply establishing a separate set of goods to vie with the overall good, in the manner of Kagan's moderate, would not be enough to establish the sort of reasoning structure that optional acts such as the supererogatory require.



Underlying both problems is the relationship between betterness and requirement, expressed as a tension between the characteristics of the supererogatory act. In terms of the first problem, if an act is better than another, why is it optional and not required? There is a tension between the Optionality and Betterness characteristics. Equally, framed in terms of the second problem, if an act is better than another does that not provide a decisive reason to perform that act? There is a tension here between the Betterness and Rationality characteristics.

My suggested solution to the problems is in two parts. Firstly, I argue that in some cases of supererogation, the agent considers the supererogatory act to be required for him, but not others. The act is therefore not optional from the agent's viewpoint, but is from the onlooker's. The agent considers that he has a morally decisive reason to perform the act, which he sees as required for him, and so the problem of rationality disappears, for the agent at least. I still have to explain how the onlooker sees the act as optional. I call this part of the solution the *dual aspect of supererogation*.<sup>1</sup>

Secondly, I argue that where the agent does not consider the supererogatory act to be required in the special way noted above, he considers his options to be indeterminately ranked. Indeterminate ranking has the effect of allowing act A to be better than act B in some respects and also allowing act B to be better than act A in other respects. Thus, if an agent chooses to perform act A, he has chosen to perform the better act. If he chooses to perform act B, then he also chosen to perform the better act. The problem that still has to be solved here is how only one of these acts is classed as supererogatory, whilst the other is merely permissible. I refer to this part of the solution as the *indeterminacy of supererogation*.

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<sup>1</sup> The origins of this solution came from a conversation with Barbara Herman.

In this Chapter, I discuss the two parts of the solution in turn and then explain how they are linked.

## **7.2 *The dual aspect of supererogation***

In some cases of supererogation, the agent considers his act to be required. He does not see it as an option. In Russia, where many schoolchildren were killed by terrorists far to the south in Beslan, people in Moscow rushed to give blood to help the injured, normally an optional act. Interviewed, they all said something similar; 'I had no choice; I had to do this, because I had to do something'. However, my suggestion is that in these cases the agent does not consider their act in exactly the same light as a normal moral requirement, because it is not an act which is required for others. It is only required for him. So the same act is both required for the agent but judged optional for him by others.

There have been echoes of this proposal in other accounts of supererogation which I have examined. Firstly, in Chapter 3, I noted Portmore's suggestion that, when an agent wanted to perform an act which would otherwise be considered supererogatory, it ceased to be optional and became required. Although I recognised the appeal of this suggestion, I argued that the way Portmore formulated it resulted in an intuitively unsatisfactory outcome.

Portmore considered such acts as required with no stipulation that it was not required for all agents, and so his solution appeared to force us all to be heroes and saints in the circumstances where agents wanted to perform such acts. The appeal of his solution is that when agents do perform saintly and heroic deeds, it often seems to be the case that they want to perform those deeds. I cited the example of Gianna Molla's self-sacrifice for her unborn daughter. We know that Gianna Molla wholeheartedly

embraced her course of action and tried to ensure that her wishes would be carried out in the event of her being sufficiently unwell to voice them when the time came. We also know that her act was considered optional by the Church authorities, who would have considered morally permissible surgery which would have killed the unborn child, but saved Gianna. Gianna saw her act as one which was required for her, but the onlooker (and a morally rigorous onlooker in this case) saw it as optional. Therefore Portmore's suggestion that the act changes status completely is unsatisfactory, and needs modification so that in the cases where supererogatory acts are required by the agent, they remain optional to others.

Portmore's change of deontic status in the case of agent preference was brought about because he considered cost to be a necessary condition of a supererogatory act. If cost disappeared, as it did in the case where the agent wanted to perform the act, then such an act could not be supererogatory on his account. In Chapter 4, I rejected cost as a necessary condition of a supererogatory act, and I am not therefore bound to reject cost-free acts as supererogatory. I can accept that there is an element of requirement if the agent wants to perform the act, but it is requirement for him alone.

In Chapter 5, I noted that Frank Jackson's account of consequentialism allowed for an epistemological gap, which could also have the effect of making an otherwise supererogatory act appear required for the agent. On this account, the agent makes his judgement as to which act is required based on the knowledge that is available to him. I suggested that the BalACLava hero, Henry Ramage, might not have been able to consider all the relevant aspects of his heroic acts which enabled onlookers to classify them as supererogatory and worthy of the VC, but instead he simply had enough information to consider his acts as part of his duty. Although I think that this sort of epistemological gap between agent and onlooker might account for the performance

of some of the acts which we consider supererogatory, it is obviously not a comprehensive solution.

In Chapter 6, I put forward an interpretation of a suggestion by Trianosky that there were two standards in operation when we assessed an agent's acts. The first standard concerns the motivational structure of the agent. The second standard is an assessment of whether the act is right or wrong. In the case of supererogatory action, it is clear that the act is always right in that it promotes moral worth. However, if an agent fails to perform the act, he is not necessarily open to moral criticism on the basis of the first standard. In the case of heroic and saintly deeds, for example, the agent may manifest some shortcoming in his motivational shortcoming in not performing the act, but the shortcoming is not sufficient to warrant criticism. In other cases of supererogation, we may consider that the agent is justified in not performing the act, but that he is nonetheless open to criticism if he fails to perform it, as in the cases of the examples of 'standing on one's rights'.

Trianosky attributes the assessment of an act according to the motivational structure of the agent as being part of private morality, whilst principles of wrongdoing which determine the purely deontic status of the act belong to public morality. He suggests that agents often operate with these dual assessments in mind. So for example, saints and heroes often judge their own actions much more harshly than others do, because they have higher private standards to live up to, but they do not judge others by these standards.<sup>2</sup> I say more about this below in 7.8.

My proposal that an agent sees his act as required for him alone but optional for others has the desirable result of explaining why so many agents who perform

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<sup>2</sup> Trianosky (1986) pp.467-468.

supererogatory acts claim that they were only doing their duty, but it still preserves the Optionality characteristic of the act. However, there are two problems.

The first is that, if the agent believes that the act is required, then he ought also to say that the act could be demanded of others, according to the universalization requirement of morality. The second problem is that if he does not believe this, (and it seems to fit with the phenomenology that this is the case) then how does this sort of act differ from a required act, which the agent presumably does believe can be required of others? In other words, even though the reasoning process looks like a normal reasoning process of weighing, with the supererogatory act coming out required for the agent, there is some difference which we ought to be able to point to so that we can explain the non-universalizability of the act.

Perhaps the agent is tempted to say something like 'I had to do it, but I wouldn't dream of suggesting that you had to'. The sort of differences we might point to then are going to be particular to the agent. When the agent performs the reasoning process, he is factoring in something specific to him which affects the calculation. It is in this sense that a form of subjectivity is involved in my dual aspect proposal.

On this view, if the agent performs the supererogatory act, then there are agent-relative reasons which led him to do this. This is the opposite of the paradigm example of the supererogatory act whereby agent-relative reasons act as reasons *not* to perform the supererogatory act, which is usually represented by an act promoting the agent-neutral good and requiring great sacrifice of agent-relative goods by the agent. 'Agent-relative' means something slightly different in my proposal. It is perspectival, rather like Portmore's evaluator relativity. Although it preserves the idea that there is the possibility of a bias operating in favour of the agent, it is not a bias in the sense that we normally think of when considering the contrast between



agent-relative and agent-neutral. We normally consider that the agent is allowed to overweight his interests compared with others and this provides him with a reason not to perform the supererogatory act. Here we are considering the point that the agent sees himself in a special position in relation to the supererogatory act compared with others. He believes that he must perform this act, but does not see it as something that others *must* do, in the sense that he could righteously turn to others and say that they ought to do the same.

If we accept that there could be an answer along these lines, we return to the two pressing problems that stem from this question: How do we explain that the agent sometimes sees himself standing in a particular position in relation to an act which means that he is required to do it but others are not? The first problem is whether and how to universalize what the agent believes he ought to do. The second is how to distinguish such an act from a required act.

Here is a possible answer to the first problem. To universalize is not to generalize, as Philip Pettit reminds us:

'...if we say that an agent A ought to choose option O in circumstances C - these may include the agent, the behaviour of others, the sorts of consequences on offer, and the like - then we assume that something similar would hold for any similarly placed agent. We do not think that the particular identity of agent A is relevant to what A ought to do, any more than we think that the particular location or date is relevant to that issue. In making an assumption about what holds for any agent in C-type circumstances, of course, we may not be committing ourselves to anything of very general import. It may be, for all the universalizability constraint requires, that C-type circumstances are highly specific, so specific, indeed, that no other agent is ever likely to confront them'.<sup>3</sup>

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<sup>3</sup> Pettit (2000) p.179

Pettit's description of highly specific universalizability seems enough to answer the first problem. Think of the sort of comment that often accompanies supererogatory acts. The agent says, demurring at the suggestion that his act was more than required: 'You would have done the same, *in my position*.' This very specific form of universalizability helps explain how the agent saw himself, and himself only, in a particular position in relation to the act. Because of where he was and who he was, and all the factors that make up the circumstances, he believes that he was required to act, but not others who were not in exactly the same position.<sup>4</sup>

The dual aspect solution appears to require me to adopt two perspectives. The personal perspective allows the agent to see why the act is required. However, he does not see that it is required for everyone because he sees the highly specific universalizable circumstances of the act as only applying to him. He therefore fails to understand the requirement for all to act as he does in these circumstances. The onlookers also fail to see that there is a universalizable requirement to act so they do not consider that the agent was required to act. They consider his act optional and therefore supererogatory.

The second problem concerning the distinction between a supererogatory act and a required act, given that the agent thinks that the supererogatory act is required for him, is solved by suggesting that the supererogatory act involves a faulty perspective on both the agent's and onlooker's part. The distinction between a required act and a supererogatory act is that in the case of a required act both the agent and the onlooker can perceive the universalizable aspects of the act which make it required for the

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<sup>4</sup> Charles Fraser received his VC for saving a number of men from drowning whilst they were in pursuit of the enemy. Asked if he could swim, he replied 'like a duck' and immediately plunged into the river and saved the men under enemy fire. Arthur (2004). Fraser presumably thought that his capability meant that he was specially suited for this act of bravery.

agent and from the onlooker's viewpoint, whereas in the case of a supererogatory act neither the agent nor the onlooker sees the universalizable aspects.

If we accept that otherwise supererogatory acts which the agent considers required are in fact required for everyone by virtue of a highly specific form of universalizability, then we will have lost the Optionality characteristic of supererogatory acts. They turn out to be required after all, but the very specific circumstances of the act means that it is very difficult or impossible for anyone other than the agent to perceive the requirement. The act is not optional for the agent. Further, if we accept that there is some form of highly specific universalizability at work, then it is not in fact optional for anyone and that may seem damaging in terms of providing a solution to the pressure of requirement problem. Effectively, if we accept the highly specific universalizability approach to supererogation, then supererogatory acts lose their optional characteristic and become required. Supererogation 'disappears' at a fundamental level in morality and becomes something of a cosmetic feature, as a result of faulty perspective.

I shall be proposing a different answer in 7.10 below, although I acknowledge that choosing between my solution and the one proposed above is difficult and not clear-cut. I shall argue that, combined with a solution to the moral reasoning problem, the dual aspect solution may yet form part of an attractive viable solution to the two problems of supererogation I have posed.

### ***7.3 The indeterminacy of supererogation***

The reasoning process in the case of a supererogatory act must apparently not take the form of weighing two acts and deciding that one act comes out 'better' than the other. Otherwise, it is difficult to escape the conclusion that the act which is better is

required and acting on the alternative is both forbidden and irrational. The judgement that an act is better than another can take two forms. It can be made either quantitatively; one act has more of a particular value than the other, so that is the act chosen to perform. Or the judgement can be qualitative; one act promotes a value which is always morally better than the value promoted by the alternative act. If we proceed in this way, we find ourselves in the bind that Kagan illustrates. The act that comes out better according to this process is surely required, not optional. This is why efforts to establish values based on partial concerns which rival the impartial good seem useless. If these values can be set up as moral values, then if the moral process is carried out in this way, they either win the process and so are required, or they don't and are forbidden. Establishing such values might help as excuses for failure to perform the optimal act. But they certainly do not help to explain the reasoning process behind a genuinely optional act.

To do that, we need to establish a moral reasoning process which behaves differently in cases of supererogation. I suggest there are two paths we can follow, which when brought together provide a solution to the two problems. Firstly, as discussed above, I propose that the optionality of a supererogatory act is a third-party optionality and does not figure in the reasoning process of the agent. Secondly, we can say that the process of weighing is inappropriate in many cases of moral reasoning and supererogatory acts in particular. I consider this second part of the solution now.

In the case of an optional act, when we deliberate and decide on the right action, act A, we are assuming that we leave an alternative action, act B, undone, but permissibly so. If both acts are optional, we could have performed act B and left A undone, equally permissibly. The extra twist with supererogatory action is that one act, let us say A, is the supererogatory act and is 'better' than act B. How do we achieve a

structure that allows for options and meets both the Betterness and Rationality characteristics?

I propose an answer by assuming that there are plural moral values, not just one overall good, and that these values come from fundamentally different sources. I develop this idea below.

#### ***7.4. The justification of plural moral values rather than a single master-value and the implications for moral reasoning***

Nagel claims that certain values are different because they have different formal structures. He isolates five types of value which figure in 'conflict' decision making. For my purposes some of these values also figure in the decision making that surrounds supererogation. The values are:

- i) Obligations, by which Nagel means special obligations to family, friends, colleagues and so on.
- ii) Constraints on action derived from rights which we all have; for example, the right not to be harmed and the right to liberty
- iii) Utility, meaning the effect of what one does on everyone's welfare whether or not the components of that welfare are connected to special obligation or general rights. Nagel has as an example the general benefits of medicine and education.
- iv) Perfectionist values, by which Nagel means the intrinsic value of achievements or creations apart from their value to individuals who experience or use them.
- v) Commitment to one's own projects or undertakings. This is a value in addition to whatever may have led to them in the first place. Once you have decided to climb Everest, says Nagel by way of example, then the carrying through of that project acquires a value distinct from the climbing of the mountain.



Utilitarians will not agree to some or any of these values as self-standing, apart from utility. But many theorists will agree that Nagel has said nothing contentious so far. What matters in the case of supererogatory action is how these values are prioritised. Nagel suggests that he sees ranking of these values as complex. He claims:

'a simpler moral conception might permit a solution in terms of a short list of clear prohibitions and injunctions, with the balance of decision left to personal preference or discretion'.<sup>5</sup>

That 'simpler moral conception' is reminiscent of Urmson's gentleman's club analogy of morality, where what is important is to avoid breaking the rules. Having seen to that aspect of morality, one can either be a passive member of the club or one can be a 'contributor' who joins committees, organises events and so on. In other words, we can choose whether to behave in a merely permissible fashion or to supererogate. It is easy to give wide scope to supererogation with a 'base-line' morality such as Urmson's which concentrates on the avoidance of wrong. Nagel rightly rejects this 'simpler conception' as he claims it will not work with such a mixed collection of values.

Nagel suggests having a system of ordering the values. But although he says that we can point to some relative stringency rules operating between the values, these rules do not always hold. We saw this at work in Kamm's suggestion that a supererogatory act could sometimes be done instead of a duty, but not always. Sometimes it is not even clear that an act is supererogatory, rather than an infringement of a duty. For example, I have already referred to the controversy over whether Gianna should have sacrificed herself for one child, thus effectively leaving four children motherless.

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<sup>5</sup> Nagel (1979) p.131

Nagel also rejects the idea of a single scale on which these values can be added, balanced and weighed. This is what consequentialists do, and we saw in Chapter 2 that Kagan's notion of the overall good worked in this way. It is important to my proposal of the indeterminacy of supererogation that there should not be a single scale of value against which other values can be balanced and weighed.

In Nagel's case of five sources of value, such a scale would have to represent either another value which takes precedence over the five we already have or one of the five would have to be nominated as the dominant value. In utilitarianism, utility in one shape or form is such a value. Nagel gives his reason for rejection as theoretical and not related to his objections to theories such as utilitarianism, which for him sometimes yield the wrong result through the single scale approach. He says:

'I do not believe that the source of value is unitary - displaying apparent multiplicity only in its application to the world. I believe that value has fundamentally different sources, and that they are reflected in the classification of values into types. Not all values represent the pursuit of some single good in a variety of settings'.<sup>6</sup>

As evidence that values come in different types, he points to the formal difference between values such as utility, which take into account the number of people affected and perfectionist values, which do not. Nagel then goes on and marks differences between values as to whether they are agent-relative (or agent-centred) and agent-neutral. I do not think that it is necessary to draw these particular distinctions to make the point that I wish to from the picture that Nagel has drawn of values. Rather, I would take the position that Scanlon has adopted to value.

Scanlon also believes that there are plural values and that there is not one master-value against which other values can be measured. He demonstrates that,

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<sup>6</sup> *ibid.* p.132

although it is tempting to think of 'well-being' as a master-value, there are in fact values, both moral and non-moral, which are quite distinct from the well-being of both ourselves and others. He says:

'Treating others fairly may make my life, and theirs, go better, but this is not my reason for believing it to be worthwhile. Rather, it is worthwhile because it is required by the more general value of treating others in ways that could be justified to them. Living up to the requirements of this more general value may also make our lives better, by making it possible for us to live in greater harmony with one another. But, again, this possible contribution to our well-being is not the only thing, or the most basic thing, that gives us reason to be concerned with what we owe to each other. One more basic reason is the fact that this is part of what is required by our value as rational creatures.'<sup>7</sup>

This passage demonstrates that there are values beyond the promotion of well-being, both ours and others, however inclusive a notion of well-being we might hold. So Scanlon effectively rejects Kagan's notion of the 'overall good', which was the single master-value in his morality, and which comprised many other values but did not allow the agent to compare these values except in the context of examining their contribution to the master-value. Scanlon instead proposes that there are plural values. There are some important differences between Scanlon and Nagel's views on value, which I do not explore here. It will be sufficient for my proposal to say that in morality we deal with plural values that are distinct and that there is no master-value against which the values can be compared.

So how do we decide what to do when faced with a framework of plural values with no common scale of measurement? The problem we face is that the sources of value are plural and yet action is unitary and the justification for that action must be unitary too. This is how Nagel concludes this particular discussion on value:

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<sup>7</sup> Scanlon (2000) p.142/143.

'..the fact that action must be unitary seems to imply that unless justification is also unitary, nothing can be either right or wrong and all decisions under conflict are arbitrary.

I believe this is wrong, but the alternative is hard to explain. Briefly, I contend that there can be good judgement without total justification, either explicit or implicit. The fact that one cannot say why a certain decision is the correct one, given a particular balance of conflicting reasons, does not mean that the claim to correctness is meaningless. Provided one has taken the process of practical justification as far as it will go in the course of arriving at the conflict, one may be able to proceed without further justification, but without irrationality either. What makes this possible is *judgement* - essentially the faculty Aristotle described as practical wisdom.'<sup>8</sup>

Here Nagel talks about how to proceed in the case of 'conflicting' reasons. Supererogatory action, whilst not strictly taking the form of a dilemma, often gives rise to a conflict for the agent as I suggested in Chapter 6. He must decide between two courses of action. Both are permissible, of course, but if he follows one rather than another, then some value will appear to be lost. In a theory of value such as Nagel's, there is no common scale on which to measure the values which generate these reasons so they cannot be compared on that greater scale. Nagel is therefore forced back to a reasoning and decision process, originating in Aristotle, which is more nebulous in character. Practical wisdom will tell us which is the right value to pursue and so resolve the conflict. But in the case of supererogation, we still need to preserve the optional nature of action and the betterness of the supererogatory act. How will plural values help us do that?

### ***7.5 How the deliberation process works for supererogatory action in the case of plural values***

The natural way of thinking about moral deliberation (or so consequentialists would have us believe) is that right thing to do will be the act which promotes either the

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<sup>8</sup> Nagel (1979) pp. 134-135

most value or the value which has precedence in our moral theory. There is a consequentialist bias in that the right act is determined by the good, either qualitatively or quantitatively. This is how Kagan assumes moral reasoning will work, for example.

There are alternatives to this reasoning process which are available to us only when we are working with plural values. We need to find an alternative that yields a process surrounding supererogation that will preserve the Optionality, Rationality and Betterness characteristics. Firstly, I shall revise my categorisation of supererogatory acts.

In Chapter 1, I gave a categorisation of supererogatory acts based on ordinary morality examples. The categories included heroic acts of rescue, saintly acts and lives, favours and acts of mercy and forgiveness. In Chapter 3, I introduced the Weekend example, which set up the possibility of supererogation occurring when an agent was faced with promoting acts of contrasting value. I shall now provisionally suggest that all pairs of acts where one is supererogatory and the other the permissible alternative can be classified as one of three categories:

- i) acts of contrasting moral value
- ii) acts where one is a moral value but the other is one of no moral value
- iii) acts where both have the same type of moral value

I shall first discuss the reasoning process on the assumption that we are faced with a choice between two acts which promote different values, encompassing categories i) and ii) above. There are three possible ways of approaching the reasoning process



when we are working with plural values; rough equality, incommensurability and indeterminate ranking. I discuss these in turn.

### ***7.6 Rough equality***

One possibility is to make use of the concept of 'rough equality' in the process of reasoning. Rough equality means that we compare the two acts and their associated values and find them to be roughly equal in choice-worthiness. This means that small adjustments can be made either way in the amount of value promoted by either act, but there will no change in the resulting decision that they are roughly equal. This type of concept is particularly appealing in the context of moral decisions, where we are rarely dealing with precise units of measurement. (It also serves to emphasise why moral examples which do use precise units of measurements such as money or number of lives saved often yield unacceptable results, as I noted in Chapter 2 when commenting on Kagan's examples of this kind).

Here is how 'rough equality' reasoning could work to yield a satisfactory justification of supererogation in the case of the Weekend Example. There, I had the choice of spending the weekend working for charity or working on my philosophy article. (I left it open as to whether working on my philosophy article was a moral value or not.) Suppose I consider that the choice-worthiness of each of my options as to how to spend the weekend is equal. I then learn that my deadline for my philosophy article has been brought forward a few days. It is more pressing that I finish it. This might influence my decision, but conceivably not. Again, suppose I learn that this will be my last chance to work for this particular charity. The same applies. Although these factors might tip the balance and persuade the agent to act one way or another, there is also the possibility that, factored in with all the other concerns that he has, they do not amount to enough to favour one option or the other. The acts remain evenly

balanced or roughly equal from the agent's viewpoint. Let us say that I choose to work for charity. Having considered that the options were roughly equal in choice-worthiness, in what sense can working for charity be said to be better than writing my philosophy article?

Using the idea of the dual aspect above, we could say that working for charity is better only from the onlooker's viewpoint. It could not be described that way from the agent's viewpoint because he sees the options as 'roughly equal' and this would rule out the possibility of a relationship of 'better than' pertaining between the choices. In this case though it is not a dual *deontic* aspect; let us assume that the onlooker also regards the act as optional, just as the agent does, but he makes a different judgement about the relationship between the agent's choices. However, all we have succeeded in doing here is to push the problem of finding a reasoning process that combines the Optionality and Betterness characteristics away from the agent, who sees both acts as optional with one not necessarily better than the other, and onto the onlooker. I conclude therefore that rough equality will not provide an answer to the moral reasoning problem.

### **7.7 Incommensurable values**

Another way of developing the story of plural values is to suggest that values are always incommensurable. If values are incommensurable, there is no common scale for measuring the values. So if values are incommensurable, act A could never be inferior to act B, nor equal to it, nor superior to it. This is a necessary feature of incommensurable values.<sup>9</sup> But we need act A to be superior in some sense to act B if

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<sup>9</sup> See Seung and Bonevac's (1992) reference to Joseph Raz p.799

it is the supererogatory act, otherwise it will not meet the Betterness characteristic. It might seem that incommensurability is a non-starter.

However, we could consider the possibility that even if there is no common measure for incommensurable values, there is still a possibility that we could rank them as to choice-worthiness. Values could be incommensurable in the sense that they cannot be placed on a common scale of value, but they might still be comparable in that they could be ranked.

Two different types of ranking might be available even in the case of incommensurable values; algorithmic and non-algorithmic. If I want to compare fishes and rabbits as possible pets for my daughter, I have the possibility of using three (at least) measures of value. I can compare them with regard to ease of looking after (v1), expense of purchase and maintenance (v2) and appeal to my daughter (v3). If fishes are superior to rabbits in each of the three value measures, then I can rank fishes above rabbits algorithmically because we can aggregate the different readings of the value-measures. Algorithmic ranking is the normal way to rank when values are commensurable; that is what we do when we have a common scale to measure them by. If we assess values by how much they contribute to the overall good, then all we have to do is to compare them on that common scale and see which is the greatest. However, even in the case of incommensurable values, algorithmic ranking is sometimes possible, as in the above example where fishes come ahead of rabbits on every gauge of value, even though the gauges are incommensurable because they cannot be measured against a common scale.

Now suppose that fishes are superior to rabbits in respect of ease of care, equal in terms of cost of maintenance and worse in respect of appeal to my daughter - they are not as cuddly as rabbits. There is no super-measure that can aggregate their readings.

We might decide to rank them nonetheless, but we would have to do this by appeal to intuitions. Say rabbits come out at the top. This would be a positive result of non-algorithmic ranking. If we can't rank them, we say that we have achieved a negative result of incommensurate ranking.

Ranked incommensurable values will not help in the account of supererogation though. If I decide that one choice is more worthy than another, even on the basis of non-algorithmic ranking, then I am effectively saying that that choice is better than the others, and it is morally required. Negative incommensurate ranking on the other hand may allow me to preserve the optional characteristic, but will not allow me a way of saying that my supererogatory act is better than my alternative permissible act (because I have not been able to rank my choices). So incommensurability is not the solution either.

### ***7.8 Indeterminate rankings in the case of contrasting values***

The third possibility is to make use of the concept of indeterminate ranking in the case of plural values. Seung and Bonevac give the following definition of indeterminate ranking:

'The ranking of A and B is indeterminate just in case it is reasonable to conclude that A is better than B, that A is worse than B, and that A and B are of equal value'.<sup>10</sup>

A and B are not being compared against a particular value measure, but 'all things considered'. In ordinary language, we can imagine ourselves saying that A is better than B in this respect, worse in that and equal in this respect, where we name three different values, as I did in the example of the fishes and rabbits above. Seung and

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<sup>10</sup> *ibid.* p. 802

Bonevac make the point that this definition of indeterminate ranking is the logical contrary of incommensurate ranking, which they define as:

'The ranking of A and B is incommensurate just in case it is neither true that one is better than the other nor true that they are of equal value'.<sup>11</sup>

As they point out, appealing to the different formulae can give different accounts of choices. Let us use Jane's career as an example. If she chooses the career of lawyer over that of aid worker based on the incommensurate ranking formula, she has no reason to say that the career of lawyer is better than that of aid worker. She appears to have no reason for her choice at all. If she chooses according to the indeterminate ranking formula, then she can say that there is a superiority in the career of aid worker to that of lawyer and that is the reason for her choice. The superiority will be presumably based on the idea that she is helping others who really need her help. However, she also has a reason to choose the career of lawyer over that of aid worker on the indeterminate ranking formula. It too is superior, because it makes full use of her talents and accords with her life plan. She is admirably suited to working as a lawyer in her local community, whereas, apart from her willingness to help, she is less suited to the role of aid worker.

The formula of indeterminate ranking therefore yields more than one right choice and gives the opportunity of describing that choice as superior to the alternatives. How could this be? The answer lies in understanding more about the relationship between goals and values. Scanlon is helpful on this point, suggesting that when we adopt a goal, 'it is not just a matter of attaching a positive value to its accomplishment and counting this in favor of any action that would promote it'.<sup>12</sup> He continues:

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<sup>11</sup> *ibid.* p.802

<sup>12</sup> Scanlon (2000) p.86



'When we "adopt a goal" we normally give that goal a particular status in our lives and our practical thinking, such as the status of a long-term career objective, or of a whim, or of something that we want to do sometime on a vacation. That is to say, the intentions that constitute adopting the goal specify the occasions on which it is to be pursued, and so on.'<sup>13</sup>

This might help to understand how it is that on some occasions certain choices are better than others in certain respects, which is just what we want to preserve the Optionality and Betterness characteristics of the supererogatory act, and to avoid the problems of requirement and rationality.

Above, I have considered the indeterminacy solution in relation to supererogation which comes about as a result of comparing acts which involve different values. As I noted in my recategorisation of supererogatory acts above, this may either involve different moral values (category i) or a choice between an act with moral value and an act with some other kind of value (category ii).

In my example of Jane, some moral theories might consider that it represents a choice between two moral values. From the Kantian perspective, both helping others and developing one's talents are moral values. On other moral views, Jane's decision to pursue her career might be seen as a non-moral value contrasting with helping others as a moral value. I do not consider that my indeterminacy solution is affected, whichever view is taken by the moral theorist. However, if the morality allows for the pursuance of non-moral values instead of moral values, then only the moral option will ever be supererogatory. This maintains the Moral Worth characteristic of the supererogatory act. On the indeterminacy view, I am then committed to saying that it is not always better to pursue a moral value in the face of a non-moral value.

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<sup>13</sup> *ibid.* p86

Although the fact that an act has moral value might contribute to its being better than the alternative act, the indeterminacy solution also allows the alternative permissible act to be better than the moral act in certain respects.<sup>14</sup> This places me in a similar position to Portmore, who allowed his agent to ignore an act with moral value and act on 'all considered' reasons, which related to non-moral values. However, in Portmore's case, pursuing the moral option and acting supererogatorily also meant acting irrationally. The indeterminacy solution does not give that unsatisfactory result.

### ***7.9 Indeterminate ranking in the case of the same value***

The third category of supererogatory act on my categorisation concerns the case where supererogation is the result of doing more of one value than we are required to do. Will the indeterminacy solution work in these cases?

Here, the indeterminacy solution might seem to face a familiar problem. Assume that an example of these cases is one where I have the option of pursuing an act with a certain value and fulfilling my duty, or pursuing an act with *more* of the same value and behaving supererogatorily. This seems to place us back in the territory of the consequentialist, who will ask that if we have the choice of promoting a value to a certain extent and promoting the same value to a greater extent, how is the latter optional and not required? According to the indeterminacy solution, we have appealed in the cases of contrasting value to differing respects in which one act is better than the other. This seems plausible when one is dealing with different values, but less so

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<sup>14</sup> I do not discuss here in detail how acts can be 'better' than others, although Scanlon's suggestions about how we treat our goals is a helpful lead. The one stipulation is that in the case of supererogation, acts with moral value are never conclusively better than acts with non-moral value. (Otherwise they would be required). However, theorists who acknowledge both moral and non-moral values are then forced to recognise that, in the case of required acts, the moral act is conclusively better; that is why it is required. They must therefore come up with a distinction between required and supererogatory acts to explain that.

when the difference is between the quantity of one value. Firstly, I consider whether there are really any examples of supererogation which involve the same value for the supererogatory act and the alternative permissible act.<sup>15</sup>

Suppose I have a duty to take care of my aunt in her daughter's absence. I see three courses of action open to me; a) I can telephone her and check she is all right. b) I can telephone and visit, which is better, because I know she likes to see me. c) I can not telephone, but visit and take her out and do some shopping for her. Assuming that a) fulfils the duty, but that b) and c) are permissible alternatives and indeed supererogatory, then it is not just that there is the latitude to fulfil a duty in a number of different ways, but it seems that it is possible to fulfil a duty in ways that are more than the minimum required. In other words, one can apparently perform a duty in a supererogatory manner. Indeed, in the case of c), I can even skip the minimum performance of telephoning and move directly to the level of the supererogatory, as Kamm suggested was possible.

What values are being compared in the case of the supererogatory acts b) and c)? Is it the case that I consider them in comparison with a), the dutiful act? Or do I consider them in comparison to other acts which I might have performed instead of the time taken to visit and go shopping with my aunt? Perhaps I might have continued to write my philosophy article instead. The reason that I consider merely doing the duty acceptable might not be just that it is the duty, but that doing more involves me in the loss of alternative activities. So the comparison when extending a duty to supererogatory levels is still with acts of contrasting value.

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<sup>15</sup> Seung and Bonevac (1992) although not discussing supererogation explicitly would presumably disagree. They boldly state that 'every choice is a choice between competing values'. p. 809

What about the duty of developing one's talents? I suggested that Evelyn Glennie can be said to have supererogated by doing more of this duty; it does not appear to be the case that she has supererogated by doing more of a contrasting value. She has simply done more of the value related to developing her talents than is considered required. However, presumably she could have chosen to do something else with her time other than the excess time devoted to her music, and it is in the sense that in this case also the supererogatory choice can be said to be the result of competing values.

Thus, even acts of supererogation which involve doing more of a value which is required by duty are in fact acts chosen against the background of competing values, where the agent compares the extra which is to be done over and above the duty with values which he might otherwise have pursued.

#### ***7.10 How the dual aspect and indeterminate ranking solutions are linked***

On my account so far, the Optionality characteristic of supererogatory acts will be justified by the fact that there are plural values and that this frequently results in indeterminate ranking of those values. This allows us to say both that we have an option to pursue either of two permissible acts, and to describe one of those acts as better than the other so that if that act is chosen then we have performed supererogatorily. The Betterness characteristic is also thus met. The Rationality characteristic is not infringed, provided we accept Nagel's interpretation that the choice should be rationally acceptable, rather than required. And since any supererogatory act will involve a moral act, then the characteristic of Moral Worth too will be met.

I consider that indeterminate ranking of plural values is a suitable and attractive formula for preserving the Optionality, Rationality and Betterness characteristics of the supererogatory act. It allows us to understand the reasoning process behind supererogation, preserving both the optionality of choice and the ability to say that one choice is better than another without its being required. I now consider how plural values ranked indeterminately might combine with a dual aspect solution to provide an overall account of supererogation.

Sometimes (perhaps very frequently) the choice of the supererogatory act will not come about because of indeterminate rankings, as I have suggested in my proposal of dual aspect. The act will present itself as required to the agent. Unlike a duty, he will consider it required for him, but he will not consider himself able to demand that others do it. The onlooker will not see it in this manner, but regard the act as optional and better. Two questions arise. How can the agent consider an act in this light? How does the onlooker come to this different judgement? I suggest that the answer lies in an acceptance of separate private and public judgements of moral acts. Trianosky suggested that there was this dual level of assessment in the context of supererogatory acts, but he also makes a reference to the explanation of the behaviour of saints and heroes:

'Any explanation ... must show how it is that saints and heroes may legitimately evaluate their motives and conduct by a standard that is plainly harsher than that which the rest of us recognize as legitimate in our own case. It is difficult to see how any explanation can do this without assuming that legitimate moral standards or principles can be private at least some of the time.'<sup>16</sup>

So Trianosky's model of two separate scales, the principles of wrongdoing and the standards of vice, allows the agent to do this. The principles of wrongdoing form part

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<sup>16</sup>Trianosky (1986) pp.467-468



of public morality, but the standards of vice vary from agent to agent. Saints and heroes have higher standards than the rest of us. Importantly, these two scales are not related in any simple way, as I described in the previous chapter. Evidence of the looseness of fit of these two scales comes from my suggestion that there are frequent occasions when the agent finds himself faced with the opportunity of performing either a supererogatory act or a suberogatory act. In that instance, he has to apply his own standards of vice or virtue and not just the principles of wrong or rightdoing when he decides what to do.

My justification for the optional nature of supererogation rests then on my two solutions. Firstly, I have suggested that the agent sees supererogatory action as required by him but not by others. The requirement comes about as a result of the demands of his private morality, rather than any universalizable moral requirement. Onlookers see his act as optional and supererogatory. Secondly, there are some supererogatory acts which present themselves in tandem with a permissible alternative as a kind of conflict or quasi-dilemma to the agent. He solves this conflict by appealing to indeterminate ranking of the values involved to decide what to do. If he decides to behave supererogatorily, his action is rational, optional and better than the permissible alternative in some respect. If he decides to perform the alternative permissible act, his action is rational, optional and better than the supererogatory act in other respects.

The two solutions are linked in the following manner. When the agent considers the supererogatory act as required for him, he may be applying the standards of private morality, which means that he sees it as required for him but optional for others. The onlooker applies the standards of public morality, which means that he sees the supererogatory act as optional and better than an alternative permissible act available to the agent. He reconciles the option available to the agent by appeal to

indeterminate rankings, so that the agent in the onlooker's view is not performing irrationally.

### **7.11 Conclusion**

I have suggested that the decision process that precedes all supererogatory acts can be seen as a choice between competing values. The agent will make his choice on the basis of indeterminate rankings of values. Indeterminate rankings will allow the supererogatory act to be classed as optional, yet rationally acceptable. It will also allow the judgement to be made that the supererogatory act is better than the morally permissible alternative without the suggestion that it is required.

The mechanism of indeterminate rankings can only work with a form of moral pluralism, where there are plural moral values stemming from different sources and there is no one value which represents the common scale against which other values are measured. It is the radically different nature of the values which sets up the conditions for the supererogatory conflict to occur.

In other cases of supererogatory action, the agent may be very clear that his act is required, but required only of him. In these cases, he is acting according to private moral rules, his own standards of virtue, modelled on Trianosky's standards of vice, which he does not consider can be applied to anyone else. The onlooker applies other standards to the assessment of the act and sees it as supererogatory, on the basis of the indeterminate rankings process described above.

The above solution allows me to avoid the two problems of requirement and rationality. In the case of the dual aspect solution, the agent sees the act as required but only for him. It remains optional as far as the onlooker, and public morality, is

concerned. I am able to provide an explanation of the moral reasoning process that surrounds the supererogatory act. It also means that I must reject the structure central to consequentialism that it is the production of a single good which always determines right action. However, I have not had recourse to developing separate subjective and objective viewpoints in the way commonly supposed necessary for supererogation to be explained. My acceptance of a dual aspect and separate standards in private and public morality is of course a form of dual viewpoint. It might be thought that it relies on the idea that public morality is not as demanding as private morality, and in that sense I have not entirely escaped the link between supererogation and the overdemandingness problem generated by consequentialism as outlined by Kagan. I am not sure that the difference between public and private morality need fall back to this position, although I have not fully explored this here. It might be that some account of the agent's particular perception of the situation that faces him combined with the variability of human motivation in the face of moral demands might be a sufficient answer, which does not necessarily revert to a story about the frailty of human motivation.

Urmson originally pointed to utilitarianism as the ideal theory to explain supererogatory acts. The temptation to home in on the results-based normative theory for such an explanation is clear. Supererogatory acts are all about excellent results, after all. But since Urmson, consequentialists generally have hardened their position against supererogatory acts, culminating in Kagan's objection to options. He thought that the answers to the two problems of requirement and rationality were inevitably drawn from weak and inconsistent theories about the cost that the agent had to bear in the case of supererogation. I rejected the idea that that was the only source of an answer to the two problems. Instead, I have argued that the nature of the good is important in any theory which allows for supererogation. There should be no single master-value. Instead, plural values offer the opportunity for the indeterminacy

solution. Plural values also allow the agent's perception of a situation to differ from that of the onlooker, so that the agent sometimes considers supererogatory action to be required, whilst the onlooker understands the act to be optional.

Supererogation and consequentialism may not be incompatible, but the form of consequentialism that does allow for supererogation must be sufficiently carefully crafted to avoid the two problems of requirement and rationality. Urmson recognised this. In his original article, he refers obliquely to the dual aspect solution that I have proposed. I leave the final words to him:

'I have also been so rash as to suggest that we may look upon our duties as basic requirements to be universally demanded as providing the only tolerable basis of social life. The higher flights of morality can then be regarded as more positive contributions that go beyond what is universally to be exacted; but while not exacted publicly they are equally pressing *in foro interno* on those who are not content merely to avoid the intolerable. Whether this should be called a version of utilitarianism, as I suggest, is a matter of small moment'.<sup>17</sup>

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<sup>17</sup> Urmson (1958) p.73

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